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SUPREME COURT OF THE UNITED STATES.

No. 880.

JOHN HENDERSON AND THOMAS HENDERSON, APPELLANTS,

vs.

WILLIAM H. WICKHAM, MAYOR OF THE CITY OF NEW YORK, AND THE COMMISSIONERS OF EMIGRATION.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 24, 1875.

Reversed -
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1 The President of the United States of America to William H. Wickham, mayor of the city of New York; Henry Hurlbut; George
[L. S.] J. Forrest; George W. Quintard; David Maujer; Edmund Stephenson; George Starr; William H. Wickham, mayor of the city of New York; James Lynch, president of the Irish Emigrant Society of the city of New York; and Sigismund Kaufman, president of the German Society of the city of New York, commissioners of emigration, greeting:

You are hereby commanded that you, and each of you, personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of August, A. D. 1875, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by John Henderson and Thomas Henderson, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at the city of New York, on the 25th day of June, in the year one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth.

KENNETH G. WHITE, *Clerk.*

DAVID THURSTON, *Complts. Solr.*

The defendants are required to enter appearance in the above cause in the clerk's office of this court, on or before the first Monday of August, 1875, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

2 (Indorsed:) Filed July 13, 1875.

I hereby certify that, on the 25th day of June, 1875, at the city of New York, in my district, I personally served the within subpœna upon the within-named William H. Wickham, mayor of said city of New York, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

Dated July 13, 1875.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

I hereby certify that, on the 3d day of July, 1875, at the city of New York, in my district, I personally served the within subpœna upon the within-named James Lynch, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

Dated July 13, 1875.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

I hereby certify that, on the 12th day of July, 1875, at the city of New York, in my district, I personally served the within subpœna upon the within-named David Maujer, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

Dated July 13, 1875.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

I hereby certify that, on the 29th day of June, 1875, at the city of New York, in my district, I personally served the within subpœna upon the within-named George J. Forrest, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

Dated July 13, 1875.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

3 To the judges of the circuit court of the United States for the southern district of New York, in the second circuit:

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Henderson and Thomas Henderson, aliens and residents of Scotland, Great Britain, bring this their bill against William H. Wickham, mayor of the city of New York, and Henry Hurlbut, George J. Forrest, George W. Quintard, David Maujer, Edmund Stephenson, George Starr, William H. Wickham, mayor of the city of New York, James Lynch, president of the Irish Emigrant Society of the city of New York, and Sigismund Kaufman, president of the German Society of the city of New York, commissioners of emigration, and all citizens of the State of New York; and thereupon your orators complain and say that, by the provisions of the first section of an act of the legislature of the State of New York, entitled "An act concerning passengers in vessels coming to the city of New York," passed May 5th, 1847, it was enacted that, within twenty-four hours after arrival of any ship or vessel at the port of New York from any of the United States other than the State of New York, or from any country out of the United States, the master of said vessel should make a report in writing to the mayor of the city of New York, stating the name, place of birth, last legal residence, age, and occupation of every passenger arriving
4 by said vessel on her last voyage to said port, not being a citizen of the United States, and who should have within the last preceding twelve months arrived from any country out of the United States at any place within the United States, and who should not have paid the commutation-money mentioned in the second section of said act, or have been bonded or paid commutation-money under the provisions of the act, entitled "An act concerning passengers in vessels coming to the port of New York," passed February 11th, 1824.

It was further provided in and by said first section of said act that, in case or any neglect to make such report as aforesaid, the master of the vessel should forfeit the sum of seventy-five dollars for every passenger in regard to whom such omission or neglect should have occurred, for which the owner or owners of the said vessel should also be liable, jointly and severally; and it was further provided, in and by the second section of said act that it should be the duty of the mayor, by an endorsement to be made on said report, to require the master of said vessel to pay to the chamberlain of the city of New York the sum of one dollar for every passenger reported by said master, to be paid within three days after the arrival of the said vessel at the port of New York.

That in and by the provisions of the fourth section of said act, so passed on the fifth day of May, 1847, certain persons were appointed commissioners for the purpose of carrying into effect the intent and provisions of the said act, to hold their offices for terms of years, and on the expiration of their several terms of office, it was directed by the said act that their places should be filled by the governor of the State

of New York, by and with the advice and consent of the senate. And by the said section of said act the mayor of the city of New York, the mayor of the city of Brooklyn, the president of the German Society, and the president of the Irish Emigrant Society of New York, should also severally, by virtue of their respective offices, be commissioners as aforesaid.

5 And it was further provided by said fourth section of said act that the said commissioners should be known as the "commissioners of emigration," and by that title should be capable of suing and being sued.

And it was further provided by the third section of said last-mentioned act that it should be the duty of the commissioners of emigration to examine into the condition of passengers arriving at the port of New York, in any ship or vessel, and, if on examination there should be found among such passengers any lunatic, idiot, deaf or dumb, blind or infirm person, not members of emigrating families, and who from attending circumstances were likely to become permanently a public charge, they should report the same to the said mayor particularly, and thereupon, instead of the commutation-money aforesaid, the said mayor should require in the endorsement on said report that the master of said vessel, with two sufficient sureties, execute a bond to the people of the State of New York, in a penalty of three hundred dollars for every such passenger, conditioned to indemnify and save harmless every city, town, and county within the State from any cost or charge for the maintenance or support of the person named in said bond, within five years from the date thereof, the sureties in said bonds to be required to justify that they were residents of the State of New York, and worth double the amount of the penalty of the bond, over and above all debts and liabilities, and all property exempt from execution. And it was further provided, in and by the provisions of section eleven of said last-mentioned act, that in case any master of a vessel should neglect to pay to the chamberlain such sum of money as required by said act for commutation-money for each passenger within three days after the arrival of said vessel at the port of New York, or should neglect to give the bonds so required within the said three days, the said master and the owners

6 of said vessel should be subject to a penalty of three hundred dollars for every passenger on whose account such commutation-money or such bond may have been required to be sued for by and in the name of the commissioners of emigration in any court having cognizance thereof; and it was declared in and by the said act that any ship or vessel whose master or owners should have incurred any penalty or forfeiture under said act, shall be liable for the same, which shall be a lien upon such ship, and might be enforced and collected by a warrant of attachment, and that for the purpose of such attachment the said commissioners of emigration should be deemed creditors of said ship, her master and owners respectively, as by reference to chapter 195 of the laws of the State of New York for the year 1847 will more fully and at large appear.

And your orators further show that, on the eleventh day of April, 1849, an act was duly passed by the legislature of the State of New York, and duly approved, entitled "An act to amend certain acts concerning passengers coming to the city of New York." That in and by the said last-mentioned act, the second section of said act of 1847 was amended so as to read that it should be the duty of the said mayor to require, by an endorsement to be made on the said report, that the owner or consignee of the ship from which said persons were landed

should give a several bond to the people of the State in a penalty of three hundred dollars for each and every passenger included in said report, such bond being secured as thereinafter provided, and conditioned to indemnify and save harmless the commissioners of emigration, and each and every city, town, or county in the said State from any cost which said commissioners or said city, town, or county should incur for the relief or support of the persons named in the bond within five years from the date of such bond, and also to indemnify and refund to the said commissioners of emigration any expense or charge
7 they might necessarily incur for the support or medical care of the persons named therein, if received into the marine hospital, or any other institution under their charge, each bond to be secured by two or more sufficient sureties, residents of the State of New York, and owners of a freehold in the State of the value of three hundred dollars over and above all claims, or secured by mortgage on real estate, or by the pledge or transfer of public stock of the United States or of the city of New York, or by deposit of the amount of the penalty in some bank or trust company, such security being first approved by said mayor; and that it should be lawful for any owner or consignee at any time within three days after the landing of such passengers from any ship or vessel to commute for said bonds by paying the health-commissioner of the city of New York the sum of one dollar and fifty cents for each and every passenger reported by him, as by law required; and the said health-commissioner was thereby required to pay once daily the said money, with an account thereof to the chamberlain of the city of New York. And it was provided in and by said last-mentioned act, that section three of the said act of 1847 should be so amended as to require that it should be the duty of the commissioners of emigration to examine into the condition of passengers arriving at the port of New York in any ship or vessel; and if on examination there should be found among such passengers any lunatic, idiot, deaf or dumb, blind or infirm person, not members of emigrating families, or which from attending circumstances were likely to become permanently a public charge, or who had been paupers in any other country, or from sickness or disease existing at the time of departing from the foreign port were, or were likely soon to become a public charge, the said commissioners should report the same to the said mayor particularly, and thereupon, and unless a bond as is required in the second section of said act should have been given, the said mayor should require in the endorsement on said report,
8 in addition to the commutation-money, that the owner or consignee of such ship or vessel should with sufficient sureties execute a bond to the people of the State of New York, in the penalty of five hundred dollars for every such passenger, conditioned to indemnify and save harmless the commissioners of emigration and every city, town, or county within this State from any further cost or charge to said commissioners, or any such city, town, or county for the maintenance and support of the person or persons named in said bond, or any of them, within ten years from the date of such bonds, such sureties to justify that they were residents of the State of New York, and worth double the amount of the penalty of the bond, over and above all debts and liabilities, and all property exempt from execution. And by section 5 of the said last-mentioned act, so passed on the eleventh day of April, 1849, it was provided that if the owner or consignee of any vessel should neglect to give such bond or bonds, and security therefor, as thereinbefore required, within three days after the landing of such persons or passengers, in respect to bonds required by the second section of the

said act, or should not within that time have paid the moneys authorized by said second section to be received in cases where such bonds were therein authorized to be commuted for, every such owner or consignee of such ship or vessel, severally and respectively should be subject to a penalty of five hundred dollars for each and every person or passenger on whose account said bond might have been required, or for whom such commutation-money might have been paid under said last-mentioned act; such penalty to be sued for as provided in the said twelfth section of the act of 1847, thereby declared to be amended, as by reference to chapter 350 of laws of the State of New York for 1849, will, on reference thereto, more fully and at large appear.

That, by an act passed by the legislature of the State of New
9 York, on the eleventh day of July, 1851, the first section of the act of said legislature so passed, on the 5th of May, 1847, was so amended as to require the report directed to be made by the master of a vessel to specify, in addition to what was required by the first section of the act of 1847, such passengers as were maimed or above the age of sixty years, and such passengers as should be under the age of thirteen, or widows having families, or women without husbands having families, with the names and ages of their families; and by said act of 1851, the third section of said act so passed, on the 5th of May, 1847, as the same was amended by section 3 of the act of 1849, was amended so as to require in addition to the passengers therein mentioned, that for persons above the age of sixty years, or widows with a child or children, and any woman without a husband with a child or children, and any person unable to take care of himself or herself without becoming a public charge, should be reported to the said mayor, and bonds given for them in like manner as required by the provisions of the said third section of the said last-mentioned act.

That by the seventh section of the said act of the said legislature, so passed on the eleventh day of July, 1851, the second section of the said law of 1849 was so amended as to require that the commutation-money in said section should be paid within 24 hours, instead of three days, after the landing of such passengers, as provided in said section so amended. But it was provided in and by said seventh section of the law of 1851, that no owner or consignee should be authorized to commute for the bonds so required for any passenger arriving in the port of New York between the first day of December and the fifteenth day of April, who might be sent to the marine hospital from ship-board by the health officer, or by the authority of the board of health of the city of New York, on account of illness from ship-fever; and the com-
10 missioners of emigration were authorized to commute specially for any bond in such cases, at such rates and in such manner as should appear to them equitable and proper; and in and by said last-mentioned section it was provided that, after the term of the present health commissioner, it should be lawful for the commissioners of emigration to select for the performance of the duties named in the said section, and then performed by the commissioner of health, either the mayor of the city of New York, or the chamberlain of said city, or the health commissioner, as by reference to chapter 523 of the laws of the State of New York for the year 1851 will, on reference thereto, more largely and fully appear.

And your orators further show that, by an act duly passed by the legislature of the State, and duly approved on the thirteenth of April, 1853, entitled "An act to amend the several acts relating to the powers and duties of the commissioners of emigration, and for the regulation

of the marine hospital," it was provided that the amount which the master, owner or owners, consignee or consignees of any such ship or vessel might commute for any bond or bonds authorized or required by or pursuant to the seventh section of chapter 523 of the laws of 1851, should, from and after the passage of the said act of 1853, be two dollars for each and every such passenger, instead of one dollar and fifty cents, as then provided by law; and fifty cents of the amount commuted for any passenger should be set aside for a separate fund for each and every county in the State, except the county of New York, as by reference to chapter 224 of the laws of the State of New York for the year 1853 will, on reference thereto, more fully and at large appear.

Your orators further show that, on the fourteenth of May, 1867, an act was duly passed by the legislature of the State of New York and approved, entitled "An act to amend an act entitled 'An act to amend the several acts relating to the powers and duties of the commissioners of emigration, and for the regulation of marine hospitals,' passed April 13th, 1853," and that by the provisions of the first section of the last-mentioned act it was enacted that for two years from and after the first day of July, 1867, the amount for which the master, owner or owners, consignee or consignees of any ship or vessel bringing emigrants or passengers to the city of New York, and arriving during such period, might commute for any such bond or bonds authorized or required by or pursuant to the seventh section of chapter 523 of the laws of 1851, should, from and after passage of the said act of 1853, be two dollars and fifty cents for each and every such passenger; and fifty cents of the amount commuted for any passenger or passengers should be set aside for the benefit of each and every county in the State of New York, except the county of New York, as by reference to chapter 911 of the laws of the State of New York for the year 1867 will, on reference thereto, more fully and at large appear.

And your orators further show that on the tenth day of May, 1869, an act was duly passed by the legislature of the State of New York, and duly approved, entitled "An act to amend an act entitled 'An act to amend the several acts relating to the powers and duties of the commissioners of emigration, and for the regulation of marine hospitals,' passed April thirteenth, 1853;" that by the third section of said last-mentioned act, the amount for which the owner or owners, consignee or consignees of any ship or vessel bringing emigrants or passengers to the city of New York might commute for, in lieu of bonds authorized or required by or pursuant to the seventh section of chapter 523 of the laws of 1851, should be two dollars and fifty cents for each and every such passenger; and fifty cents of the amount commuted for any passenger should be set aside for a separate fund for each and every county in the State of New York, except the county of New York, as by reference to chapter 808 of the laws of the State of New York for the year 1869 will more fully and at large appear.

Your orators further show that an act was duly passed by the legislature of the State of New York, and approved April 13th, 1871, entitled "An act to amend an act entitled 'An act to amend the several acts relating to the powers of the commissioners of emigration, and for the regulation of the marine hospital,' passed April 13th, 1853," by which it was provided that section 13 of the said last-mentioned act of the year 1853 should be so amended that the amount for which the master, owner or owners, consignee or consignees of any ship or vessel bringing emigrants or passengers to the city of New York might commute for any bond or bonds, as hereinbefore stated, should, from and after the passage

of the said act of April thirteenth, 1871, be one dollar and fifty cents for each and every such passenger, as by reference to chapter 475 of the laws of the State of New York for the year 1871 will, on reference thereto, more fully and at large appear.

And your orators further show that on the twenty-sixth day of April, 1873, an act was duly passed by the legislature of the State of New York, and approved, entitled "An act to create a board of commissioners of emigration, and to confer certain powers thereon," and that by said act it is provided that it should be the duty of the governor of the State of New York, with the consent of the senate, to appoint commissioners of emigration for the State of New York, two of said commissioners to hold their offices for two years, two for four years, and two for six years, and that the mayor of the city of New York, the president of the German Emigrant Society of the city of New York, and the president of the Irish Emigrant Society of the city of New York, should be additional commissioners of emigration, by virtue of their respective offices, but
13 that the two last-named commissioners should not have the right to vote on the appointment or removal of subordinates; and the said commissioners of emigration, it was declared by said last-mentioned act, should have all the powers and perform all the duties now imposed on the commissioners of emigration by virtue of an act entitled "An act concerning passengers and vessels coming to the city of New York," passed May 5th, 1847, and the various acts supplementary thereto and amendatory thereof, hereinbefore referred to.

And your orators further show, upon information and belief, that, under and in pursuance of the authority to them in that behalf given, by the provisions of the said act of the legislature, so passed on the eleventh of July, 1851, and the several acts amendatory to and supplementary thereof, the said commissioners of emigration did, on the same day and year, but the precise time your orators are ignorant of, select, for the performance of the duties specified in the said seventh section of the said last mentioned act, the chamberlain of the city of New York, and that ever since the commutation-moneys, in said section mentioned, have been demanded and received by, and have been paid to, and are now demanded and received by, said chamberlain of the city of New York.

And your orators further show that they are the owners of the steamship Ethiopia, which arrived at the port of New York, on the twenty-fourth day of June instant, from the port of Glasgow, Scotland, and that the said vessel had on board as passengers, on her arrival at said port, John Tully, Thomas McClure, and James McElligott, all of whom are aliens, and all of whom came as such passengers, on their way from the said port to other States and countries outside of the State of New York, and landed here only for such purpose, and without any intention of becoming citizens of the said State of New York. That the master of the said steamship Ethiopia has duly made his report to the
14 mayor of the city of New York, in conformity with the said passenger-laws of the State of New York, hereinbefore referred to; and your orators are apprehensive, and they verily believe that, unless restrained by this court, the said mayor will, by endorsement on said report, require your orators, as owners of said vessel, that they shall give bonds for the said John Tully, Thomas McClure, and James Elligott, or pay the commutation-money for said passengers, pursuant to the provisions of the laws hereinbefore referred to.

And your orators further show that, as they are advised, and as they believe, the foregoing laws of the State of New York, hereinbefore men

tioned and referred to, so far as they relate to passengers arriving at the port of New York, with the intention of passing through its boundaries, and going to other States and countries, and not int nding to become citizens of the State of New York, are in violation of the Constitution of the United States, and are void.

And your orators, upon information and belief, further show that Henry Hurlbut, George J. Forrest, George W. Quintard, David Maujer, Edmund Stephenson, George Starr; William H. Wickham, mayor of the city of New York; James Lynch, president of the Irish Emigrant Society of the city of New York; and Sigismund Kaufman, president of the German Society of the city of New York, constitute and are now the commissioners of emigration, and that they are severally citizens of the State of New York.

And your orators further show that if your orators, as owners of the said ship Ethiopia, shall refuse to give the bonds required by the mayor of the city of New York, as aforesaid, for the said John Tully, Thomas McClure, and James McElligott, or shall refuse to pay the commutation-moneys, if the same shall be so demanded from them, as hereinbefore stated, for said passengers, the said commissioners of emigration will take legal proceedings to recover from your orators the penalty of three hundred dollars for each of said passengers, so prescribed by the laws of the State of New York, and will, by warrant of attach-
15 ment, seize the said steamship Ethiopia, as authorized to do in and by said laws, and will put your orators to great trouble, inconvenience, and expense in procuring the redelivery of their property when so attached, and that thereby your orators will sustain actua and material injury.

That your orators are the owners of divers other steamships sailing and plying between the port of Glasgow, Scotland, and the port of New York, arriving at this port, on an average, once a week, bringing on each voyage large numbers of passengers who arrive at this port for the purpose of going through the State of New York to other States and countries, and that in case your orators shall, as to such last-mentioned passengers, refuse to give the bonds or pay the commutation-moneys aforesaid, your orators will be exposed to a multiplicity of suits or actions brought against your orators or their vessels by the said commissioners of emigration.

Wherefore your orators pray that, by the judgment and decree of this court, the said passenger-laws of the State of New York hereinbefore referred to, so far as they relate to passengers arriving at the port of New York, on their way to other States and countries, and not intending to become citizens of the State of New York, may be declared to be in violation of the Constitution of the United States, and void; and that the said mayor of the city of New York and the commissioners of emigration may be enjoined from demanding from your orators, or from the consignees of such ship Ethiopia bonds or commutation-money for the said John Tully, Thomas McClure, and James McElligott, or from proceeding to enforce the penalties as given under the aforesaid act by warrant of attachment against the said steamship Ethiopia; and in the mean time that the said mayor of the city of New York, and the said commissioners of emigration may be specially enjoined from so requiring or demanding said bonds or moneys from your orators, or
16 from the master of said vessel, or from proceeding to enforce the said penalties as aforesaid, and that your orators may have such other or further relief in the premises as may be proper and agreeable to equity and good conscience.

Your orators therefore pray that they may have granted to them a writ of subpœna to be issued under the seal of this court, directed to the said William H. Wickham, mayor of the city of New York, and Henry Hur'but, George J. Forrest, George W. Quintard, David Maujer, Edmund Stephenson, George Starr, William H. Wickham, mayor of the city of New York; James Lynch, president of the Irish Emigrant Society of the city of New York; and Sigismund Kaufman, president of the German Society of the city of New York, commissioners of emigration, therein and thereby commanding them on a certain day, and under a certain penalty, to be and appear before this court, then and there to answer this bill of complaint, and to stand to and abide by such order or decree in the premises as shall seem meet and agreeable to equity and good conscience.

And that your orators may also have granted unto them a writ of injunction to be issued out of and under the seal of this court, to be directed to the mayor of the city of New York and the said commissioners of emigration, their attorneys, counsellors, clerks, servants, and agents, enjoining and restraining them and each and every of them as hereinbefore prayed for.

HENDERSON BROTHERS,
By W. COVERLY.

HENRY NICOLL,
Of Counsel.
DAVID THURSTON,
Solicitor.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

WILLIAM COVERLY, being duly sworn, deposeth and saith that
17 he is a member of the firm of Henderson Brothers, the agents and attorneys in fact of John Henderson and Thomas Henderson, the complainants in the foregoing bill named, who respectively reside out of the United States of America, and at Glasgow, Scotland, and that the foregoing bill of complaint is in all respects true.

W. COVERLY.

Sworn to before me this 25th day of June, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of N.Y.

18 Circuit court of the United States for the southern district of New York, in the second circuit.

THOMAS HENDERSON AND JOHN HENDERSON
against
WILLIAM H. WICKHAM, MAYOR OF THE CITY of New York, and Henry Hurlbut, George J. Forrest, George W. Quintard, David Maujer, Edmund Stephenson, George Starr; William H. Wickham, mayor of the city of New York, James Lynch, president of the Irish Emigrant Society of the city of New York, and Sigismund Kaufman, president of the German Society of the city of New York, commissioners of emigration.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

THOMAS MCCLURE, being duly sworn, deposeth and saith, that he

is an alien; that he came as passenger on board of the steamship Ethiopia, which arrived at the port of New York on the twenty-fourth day of June instant, from the port of Glasgow, Scotland; that deponent took passage on board of said steamship for the purpose of going directly, on the arrival of said vessel at the said port of New York, from thence to Nashville, in the State of Tennessee, where deponent intends residing, and that deponent intends leaving from said port of
19 New York, for said Nashville, on the twenty-fourth day of June instant. And further deponent saith not.

THOMAS McCLURE.

Sworn to before me this 24th day of June, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

Circuit court of the United States for the southern district of New York, in the second circuit.

THOMAS HENDERSON AND JOHN HENDERSON
against
WILLIAM H. WICKHAM, MAYOR OF THE CITY of New York, and Henry Hurlbut, George J. Forrest, George W. Quintard, David Maujer, Edmund Stephenson, George Starr; William H. Wickham, mayor of the city of New York, James Lynch, president of the Irish Emigrant Society of the city of New York, and Sigismund Kaufman, president of the German Society of the city of New York, commissioners of emigration.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

20 John Tully, being duly sworn, deposeth and saith, that he is an alien; that he came as passenger on board the steamship Ethiopia, which arrived at the port of New York on the twenty-fourth day of June instant, from the port of Glasgow, Scotland; that deponent took passage on board of said steamship for the purpose of going directly, on the arrival of the said vessel at the said port of New York, from thence to Toronto, Canada, where deponent intends residing, and that deponent intends leaving from said port of New York, for said Toronto, Canada, on the twenty-fourth day of June instant. And further saith not.

JOHN TULLY.

Sworn to before me this 24th day of June, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

21 Circuit court of the United States for the southern district of New York, in the second circuit.

JOHN HENDERSON AND THOMAS HENDERSON
against
WILLIAM H. WICKHAM, MAYOR OF THE CITY of New York, and Henry Hurlbut, George J. Forrest, George W. Quintard, David Maujer, Edmund Stephenson, George Starr; William H. Wickham, mayor of the city of New York, James Lynch, president of the Irish Emigrant Society of the city of New York, and Sigismund Kaufman, president of the German Society of the city of New York, commissioners of emigration.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James McElligot, being duly sworn, deposeth and saith, that he is an alien; that he came as passenger on board the steamship Ethiopia, which arrived at the port of New York on the twenty-fourth day of June instant, from the port of Glasgow, Scotland; that deponent took passage on board of said steamship for the purpose of going directly, on the arrival of the said vessel at the said port of New York, from thence to Denver City, Colorado, where deponent intends residing, and
22 that deponent intends leaving from said port of New York, for said Denver City, Colorado, on the 24th day of June instant. And further saith not.

JAMES McELLIGOT.

Sworn to before me this 24th day of June, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

(Endorsed:) U. S. circuit court for the southern district of New York. Thomas Henderson & John Henderson et al. vs. Wm. H. Wickham, Mayor, &c., et al. Bill. James Ernalt, of counsel. Filed June 25, 1875.

23 At a circuit court of the United States, held at the city of New York, on the 25th day of June, 1875, for the southern district of New York, in the second circuit.

Present—Hon. Samuel Blatchford, Justice of said court.

THOMAS HENDERSON AND JOHN HENDERSON
against
WILLIAM H. WICKHAM, MAYOR OF THE CITY OF New York, and Henry Hurlbut, George J. Forrest, George W. Quintard, David Maujer, Edmund Stephenson, George Starr; William H. Wickham, mayor of the city of New York, James Lynch, president of the Irish Emigrant Society of the city of New York, and Sigismund Kaufman, president of the German Society of the city of New York, commissioners of emigration.

Upon the bill of complaint in this suit with affidavits annexed, duly

filed in the office of the clerk of this court, on motion of James Emott, esq., of counsel for the complainants, let the defendants show cause before this court, at the court-room thereof, on the 13th day of July, 1875, at 12 o'clock noon of that day, or as soon thereafter as counsel can be heard, why an injunction should not be issued in this suit conformably with the prayer of the said bill of complaint. And it appearing from said bill and affidavits that there is danger of irreparable injury to the complainants from delay, it is hereby ordered that William H. Wick-
24 ham esq., mayor of the city of New York, be, and he is hereby, from and after the service of this order, restrained from requiring by endorsement on the report made to him as said mayor, as in said bill stated, that the complainants, as owners of the ship Ethiopa, in said bill named, or the consignees of said ship, give a several bond to the people of the State of New York in a penalty of three hundred dollars for each of the three passengers in said bill named, that is to say, John Tully, Thomas McClure, and James McElligott, conditioned to indemnify and save harmless the commissioners of emigration, and each and every city, town, and county in the State of New York from any cost that may be incurred for the support of the said John Tully, Thomas McClure, and James McElligott, within five years from the date of said bonds, or from requiring said complainants or the consignees of said ship from paying commutation-moneys for said John Tully, Thomas McClure, and James McElligott in lieu of said bonds, and that the said Henry Hurlbut, George J. Forrest, George W. Quintard, David Maujer, Edmund Stevenson, George Starr, William H. Wickham, mayor of the city of New York, James Lynch, president of the Irish Emigrant Society of the city of New York, and Sigismund Kaufman, president of the German Society of the city of New York, commissioners of emigration, be, from and after the service of this order, restrained from demanding such bonds or commutation-moneys from said complainants.

(Signed,) SAML. BLATCHFORD.

Endorsed: U. S. circuit court for the south. dist. of New York. Thomas Henderson, et al. vs. W. H. Wickham, mayor &c. Order.

Filed July 13, 1875.

25 U. S. circuit court, southern district of New York.

JOHN HENDERSON ET AL.
against
HENRY HURLBUT, GEORGE J. FORREST, George W. Quintard, David Maujer, Edmund Stephenson, George Starr, William H. Wickham, mayor of the city of New York, James Lynch, president of the Irish Emigrant Society of the city of New York, and Sigismund Kauffman, president of the German Society of the city of New York, commissioners of emigration, impleaded, &c.

It is hereby stipulated and agreed that the bill and subpœna in the above-entitled action be amended by striking out the names of all the

defendants above named and inserting in lieu thereof "The Commissioners of Emigration."

Dated N. Y., 18th October, 1875.

DEVELIN & MILLER,
Sol'rs for Def'ts, the Com'rs of Em.
DAVID THURSTON,
Solr. for Compl'ts.
WM. C. WHITNEY,
Counsel to the Corporation.

26 United States circuit court, southern district of New York.

JOHN HENDERSON ET AL.
agst.
HENRY HURLBUT, GEORGE J. FORREST, George W. Quintard, David Maujer, Edmund Stephenson, George Starr, William H. Wickham, mayor of the city of New York, James Lynch, president of the Irish Emigrant Society of the city of New York, and Sigismund Kauffman, president of the German Society of the city of New York, commissioners of emigration, impleaded with William H. Wickham, mayor of the city of New York.

The demurrer of the Commissioners of Emigration, defendants, to the bill of complaint of John Henderson and Thomas Henderson, complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show that the said complainants have not, in and by their said bill, made or stated such a case as does or ought to entitle them to any such relief as is thereby sought and prayed for, from or against these defendants; wherefore these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to
27 the said bill or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

DEVELIN & MILLER,
Attys. for Defendants, the Commissioners of Emigration.
M. C. WELLS,
Of Counsel.

(Endorsed:) U. S. circuit court, southern dist. of New York. John Henderson et al., vs. Henry Hurlbut, et al. Demurrer. Filed Oct. 29, 1875.

United States circuit court, southern district of New York.

JOHN HENDERSON AND THOMAS HENDERSON
vs.
WILLIAM H. WICKHAM, MAYOR OF THE CITY of New York, and the Commissioners of Emigration. } In equity.

The demurrer of William H. Wickham, mayor of the city of New York, one of the defendants in this suit, to the bill of complaint of John Henderson and Thomas Henderson, complainants.

This defendant, by protestation, not confessing or acknowledging all

or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainants have not, in and by their said bill, made or stated such a case as doth or ought to entitle them to any such relief as is therein sought and prayed for from or against this defendant.

28 Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

WM. C. WHITNEY,
Counsel to the Corporation,
Solr. and Counsel for Defendant, the Mayor.

(Endorsed:) U. S. circuit court, so. dist. of New York. John Henderson & Thomas Henderson vs. W. H. Wickham, mayor, &c., and the Comrs. of Emigration. Demurrer. W. C. Whitney, counsel to the corporation. Filed Oct. 30, 1875.

29 U. S. circuit court, southern dist. of New York.

JOHN HENDERSON AND THOMAS HENDERSON
vs.
WILLIAM H. WICKHAM, MAYOR OF THE CITY OF New York, and the Commissioners of Emigration.

Enter a decree allowing the demurrer and dismissing the bill with costs.

ALEX. S. JOHNSON,
U. S. Cir. Judge.

Decr. 14, 1875.

(Endorsed:) Direction for decree. Alex. S. Johnson, C. J. Filed Dec. 14, 1875.

30 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on the 17th day of December, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the Hon. Alexander S. Johnson, circuit judge.

JOHN HENDERSON AND THOMAS HENDERSON
agst.
THE COMMISSIONERS OF EMIGRATION AND William H. Wickham, mayor of the city of New York.

This cause having come on to be heard upon the bill of complaint herein, the seperate demurrers thereto of the defendants, the Commissioners of Emigration, and of the defendant William H. Wickham,

31 mayor of the city of New York, and having been argued by James Emott, esq., of counsel for the complainants, John E. Develin, of counsel for the defendants, the Commissioners of Emigration, and William C. Whitney of counsel for the defendant, William H. Wickham, mayor of the city of New York, and due deliberation being had thereupon,

it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree as follows, viz, that the demurrers of the said defendants be, and the same are hereby, allowed and sustained, and that the complainants' said bill of complaint be, and the same hereby is, dismissed with costs to the defendants, to be taxed, and that the said defendants have execution therefor.

Enter.

ALEX. S. JOHNSON, *Cir. J.*

(Endorsed:) Circuit court, southern district of N. Y. John Henderson and Thomas Henderson agst. The Commissioners of Emigra
32 tion and William H. Wickham, mayor of the city of New York Decree. Filed Decr. 17, 1875.

33 United States circuit court, southern district of New York, in the second circuit.

JOHN HENDERSON & THOMAS HENDERSON,
vs.
WILLIAM H. WICKHAM, MAYOR OF THE CITY of New York, and the Commissioners of Emigration.

To the honorable the Supreme Court of the United States:

The appeal of John Henderson & Thomas Henderson, the above-named plaintiffs and appellants, respectfully showeth, that on the 24th day of June, 1875, they filed their bill of complaint in the circuit court of the United States for the southern district of New York, in the second circuit, against William H. Wickham, mayor of the city of New York, and the Commissioners of Emigration, wherein and whereby it
34 was claimed by the said plaintiffs that certain laws of the State of New York should be adjudged invalid as being in violation of the Constitution of the United States, and praying that the defendants might be enjoined from demanding from the plaintiffs the bonds and commutation-moneys in said bill mentioned and referred to, and that the plaintiffs might have such other or further relief in the premises as might be agreeable to equity and good conscience.

That the said defendants, the Mayor of the city of New York and the Commissioners of Emigration, duly appeared in said cause, and that said defendants or each separately demurred to said bill on the ground that the same had not stated such a case as entitled the plaintiffs to the relief sought by them, and prayed for a dismissal of said bill with costs.

That the said case was duly heard and argued before the said
35 court on the pleadings therein, and that such proceedings were thereupon had in such court, that a final decree was made and entered by the said court, wherein it was ordered, adjudged, & decreed that the said demurrers be sustained, and that the said bill of complaint be dismissed with costs, and that the defendants have execution therefor.

That said final decree, as these plaintiffs are advised and believe, *are* erroneous and ought to be reversed.

Wherefore these plaintiffs and appellants appeal from the whole of said decree to the Supreme Court of the United States, and respectfully pray that the said final decree, and the appeal and pleadings and proceedings in said case, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to

hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed, or such other decree
36 made, as to the said Supreme Court shall seem just.

Dated 17th day of December, 1875.

JOHN HENDERSON,
By HENDERSON BROTHERS, *Atty'*.
THOMAS HENDERSON,
By HENDERSON BROTHERS, *Atty'*.

37 (Indorsed:) U. S. circuit court, south. dist. of N. Y. John Henderson & Thomas Henderson vs. Wm. H. Wickham, mayor, &c., & the Comrs. of Emigration. Petition. David Thurston, solicitor for applts. Filed Dec. 17th, 1875.

38 Circuit court of the United States of America for the southern district of New York, in the second circuit.

JOHN HENDERSON AND THOMAS HENDERSON
vs.
WILLIAM H. WICKHAM, MAYOR OF THE CITY of New York, and the Commissioners of Emigration.
} Bond for costs.

Know all men by these presents that we, John Henderson and Thomas Henderson, of Glasgow, Scotland, are held and firmly bound unto the above-named William H. Wickham, mayor of the city of New York, & the Commissioners of Emigration, in the sum of five hundred dollars, to be paid to the said William H. Wickham, mayor of the city of New York, & the Commissioners of Emigration, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated the seventeenth day of December, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas the above-named John Henderson & Thomas Henderson have prosecuted their appeal to the Supreme Court of the United States to reverse the final decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named John Henderson & Thomas Henderson shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN HENDERSON,
By HENDERSON BROTHERS, *Atty'*. [SEAL.]
THOMAS HENDERSON,
By HENDERSON BROTHERS, *Atty'*. [SEAL.]
W. COVERLY. [SEAL.]
A. C. SMITH. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 17th day of December, 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner for the South. Dist. of New York.

39 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William Coverly and Allen C. Smith, being duly sworn, depose and say, and each for himself prays that he is worth the sum of one thousand dollars, over and above all his just debts and liabilities.

W. COVERLY.
A. C. SMITH.

Sworn to this 17th day of December, A. D. 1875, before me.
EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

(Indorsed:) Vol. , page . U. S. circuit court. John Henderson et al. vs. William H. Wickham, mayor, &c., et al. Bond for costs on appeal. David Thurston, proctor.

I approve the form and sufficiency of the within bond.
ALEX. S. JOHNSON, *Cir. J.*

Filed this day of , 187 .
Filed Dec. 17, 1875.

40 By the Hon. Alexander S. Johnson, one of the judges of the circuit court of the United States for the southern district of New York, at the second circuit, to William H. Wickham, mayor of the city of New York, and the Commissioners of Emigration:

Whereas John Henderson & Thomas Henderson have appealed to the Supreme Court of the United States from a final decree rendered in the circuit court of the United States for the southern district of New York, in the second circuit, entered with the clerk of said court on the 17th day of December, 1875, said decree being in favor of you, the defendants, in a suit in equity brought by the said John Henderson and Thomas Henderson, as plaintiffs, against you, the said William H. Wickham, mayor of the city of New York, and the Commissioners of Emigration, and have given the security required by law:

You are hereby cited to appear before the Supreme Court of the United States, at the city of Washington, on the second Monday of October, 1876, to do and receive what may appertain to justice to be done in the premises.

41 Given under my hand, at the city of New York, in the southern district of New York, on the 17th day of December, 1875, and of the Independence of the United States the *ninety-ninth.*

ALEXANDER S. JOHNSON,
U. S. Cir. Judge.

42 (Indorsed:) U. S. Supreme Court. John Henderson & Thomas Henderson agst. The Commissioners of Emigration & Wm. H. Wickham, mayor of the city of New York. Citation.

Due & timely service of a copy of the within citation is hereby admitted.

Dated New York, 18th Dec., '75.

DEVINE & MILLER,
Solrs. for Defts., Com'rs of Em.
W. C. WHITNEY,
Counsel to the Complts.

Filed Dec. 20, 1875.

43 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby eertify that the foregoing pages numbered from one to 42, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of John Henderson and Thomas Henderson against William H. Wickham, mayor of the city of New York, and the Commissioners of Emigration, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 21st day of December, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the said United States the one hundredth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Indorsement on cover:) No. 880. John Henderson and Thomas Henderson, appellants, vs. William H. Wickham, mayor of the city of New York, and the Commissioners of Emigration. S. New York C. C. U. S. Filed 24th December, 1875.

U. S. Supreme Court.

JOHN HENDERSON AND THOMAS HENDERSON,

Plaintiffs and Appellants,

against

WILLIAM H. WICKHAM, MAYOR OF THE CITY OF NEW YORK, AND THE COMMISSIONERS OF EMIGRATION,

Defendants and Respondents.

Statement Case, Brief and Points of Plaintiff's on Appeal from decree of U. S. Circuit Court for the Southern District of New York.

DAVID THURSTON,

Solicitor for Plaintiffs Appellants.

HENRY NICOLL & JAMES EMOTT,

Of Counsel for Plaintiffs Appellants.

NEW YORK:

EVENING POST STEAM PRESSES, 208 BROADWAY, CORNER FULTON STREET.

1875.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

Supreme Court

OF THE UNITED STATES.

JOHN HENDERSON ET AL.,
Plaintiffs & Appellants,

vs.

THE MAYOR OF THE CITY OF New York, and the Commissioners of Emigration of the State of New York,
Defendants & Respondents.

Brief for Appellants.

STATEMENT.

This is an appeal from a decree of the Circuit Court of the United States for the Southern District of New York, sitting in equity. The decree appealed from sustained a general demurrer for want of equity, interposed by the defendants, and dismissed the complainants' bill, with costs.

The appellants contend that this was erroneous, and that

their bill should have been sustained, and the injunction decreed, as therein prayed for.

The bill states these facts: The appellants are subjects of Great Britain, and owners of the steamship *Ethiopia*. Their vessel arrived at the port of New York from Glasgow, Scotland, on the 24th of June, 1875, having on board a number of emigrant passengers, and, among others, three persons whose names are specified, and who came to New York from a foreign country, intending to pass through the State of New York, and to settle and reside in other States of the Union, and in Canada.

By the statutes of the State of New York the master of every vessel arriving at the port of New York, from a foreign port, is required, within 24 hours after his arrival, to report in writing, to the mayor of New York, the name, birthplace, last residence and occupation of every passenger who is not a citizen of the United States.

The statute then directs the mayor, by indorsement on this report, to require the owner, or consignee of the vessel, to give a bond for every passenger so reported, in a penalty of $300, with two sureties, each to be a resident and freeholder of this State, conditioned to indemnify the Commissioners of Emigration, and every county, city and town in this State, against any expense for the relief or support of the person named on this bond for four years thereafter.

But the owner or consignee may commute for such bond, and be relieved from giving it by paying, within 24 hours after the landing of any such passenger, the sum of one dollar and fifty cents ($1.50) for each passenger. Fifty cents of this commutation tax is to be paid to other counties in this State; the residue of the moneys raised by this tax is to be paid to the Commissioners of Emigration for their general purposes, and particularly to be used in erecting wharves and buildings, and in paying salaries and clerk hire.

If the owner or consignee does not, within 24 hours after landing such passengers, either give this bond or pay the commutation tax for each passenger, he is liable to a penalty

of $500 for every such passenger, and this penalty is made a lien on the vessel, enforceable and collectible by warrant of attachment against the vessel at the suit of the Commissioners of Emigration.

The master of the *Ethiopia* made the report required by the act, and the mayor of New York was about to sign the requisition called for by the act, to compel the complainants to give the bond, or pay the tax demanded by the act for every emigrant passenger on the vessel, and particularly for the three persons named in the bill, when the complainants filed this bill, and obtained a temporary injunction, until the hearing, restraining any further proceedings to subject them, or their vessel to the tax or the penalty in the case of the three alien passengers mentioned in the bill.

The bill also states that the complainants are owners of other steamships plying between Glasgow and New York (the Anchor Line), which arrive weekly, and bring large numbers of emigrant passengers, for each of whom they are required by this act to give a bond or pay a tax, and are liable to a several penalty, and to process of attachment for each refusal, and that by reason of those requirements and provisions, they are liable to a multiplicity of suits, and to great and irreparable injury, if the acts in question are void, as they contend, and are enforced by the city and State officers.

The statutes in question, so far as they require the giving a bond, or paying a poll-tax by carriers of emigrant passengers who land at the port of New York to go to other States or countries, are alleged by the appellants here, and in their bill, &c., in the court below to be in violation of the constitution of the United States, and to deprive them of rights and immunities secured by the Constitution.

The bill prayed for an injunction against the State officers proceeding to enforce this act, in the cases specified, and for general relief.

The defendants below demurred to this bill; the Circuit Court sustained the demurrer and dismissed the bill, and the complainants have appealed to this court.

POINTS.

I.

The acts of the Legislature of New York which are now in force, and under which the defendants demand the bond or commutation tax, or the penalty for every alien landing from a foreign port, on his way to other States or countries, and which the complainants contend deprives them of rights and immunities to which they are entitled by the Constitution of the United States, are as follows:

An Act concerning passengers in vessels coming to the city of New York—Laws of 1847, ch. 195, p. 182.

An Act to amend ch. 195 of 1847—Laws of 1847, ch. 483, p. 716.

An Act to amend certain acts concerning passengers coming to the city of New York—Laws of 1849, ch. 350, p. 504.

An Act to amend ch. 195 of 1847, and chap. 350 of 1849—Laws of 1850, ch. 339, p. 737.

See also

Laws of 1848, ch. 219, p. 328, § 1.
Laws of 1853, ch. 224, p. 430, § 1.
Laws of 1871, ch. 475, p. 100.
Laws of 1873, chap. 302, p. 434.

II.

Legislation on the subject of alien passengers was commenced by the State of New York in 1824 (see Laws of 1824, ch. 37, p. 27).

The first section of this act requires the master of a ship, within twenty-four hours after her arrival, to make a report, in writing, to the mayor, of the name, place of birth, age, settlement and occupation of every passenger, under the penalty of $75 for each passenger not so reported.

By the second section of the act, it is made lawful for the

mayor to require such master to give a bond, with two sureties, in a sum not exceeding $300, to indemnify the mayor and the overseers of the poor from all expenses incurred for the support of such passengers, under a penalty of $500 for each passenger, for whom the mayor shall determine that bonds shall be given. The other sections of the act it is not material to notice.

In the year 1829 the city of New York brought an action of debt against one Thompson, master of the ship *Emily*, averring that said vessel had brought into the port of New York one hundred passengers, and that Thompson did not, within twenty-four hours after the arrival of the ship, make his report, in writing, to the mayor, as required by the Act of 1824, and that hence he was liable to the plaintiffs in the sum of $7,500. The action was originally brought in the Superior Court of the city of New York, and Thompson being an alien, it was transferred to the United States Circuit Court. Thompson interposed a general demurrer.

It will be conceded that no part of the Act of 1824 was drawn in question in this action, except that which related to the neglect of the master to report an account of his passengers. There was a certificate of division of opinion in the Circuit Court, and the case came up in the Supreme Court, and is reported *sub nomine* City of New York *against* Milne, 11 Peters, 102.

The demurrer was overruled. The court, in its judgment, carefully confined itself to declaring "that in its opinion, so much of the section—meaning, of course, the first section of the Act of 1824—as applies to the breaches assigned in the declaration, does not assume to regulate commerce between the port of New York and foreign ports, and that so much of said act is *constitutional*."

Judge Barbour, who delivered the prevailing opinion, says, at its close: "We are, therefore, of opinion that so much of the section of the Act of the Legislature of New York as applies to the breaches assigned in the declaration, does not assume to regulate commerce between the port of New York and foreign ports, and that so much of said section is constitutional. We express no opinion on any other

part of the act of the Legislature of New York, because no question could arise in the case in relation to any part of the act, except that declared upon."

In the "Passenger Cases," 7 How., 283, Judge McLean referring, in his opinion, to the case of the city of New York *vs.* Milne, in the decision of which he participated, after stating what questions were really before the court in that case, says: "The law was considered as an internal police regulation, and as not interfering with commerce; it was a precautionary measure to ascertain the rights of the individuals and the obligation of the public under any contingency which might occur. It imposed no obstruction to commerce, and imposed no duty" (page 404).

So Mr. Justice Wayne, in his opinion, in the same case, says: "In Milne's case no point was ruled in it, either in respect to commerce, other than the right of the State to require a list of passengers who may come by sea into New York after they are landed, which gives any countenance or support to the laws in question in the passenger cases" (page 426).

And again he says, "the opinion given by Mr. Justice Barbour, though reported as the opinion of the court, had not at any time the concurrence of a majority of its members, except in this particular, that so much of the act as required the report of passengers was a valid regulation, and, therefore, was not unconstitutional, or a violation of the powers of Congress to regulate commerce" (pages 428 and 429).

It is quite evident from the opinion of Mr. Justice Wayne, that the court did not consider itself as bound by the opinion of Mr. Justice Barbour on any of the points discussed by him in the *Milne case*, except the one arising directly upon the demurrer.

The extent of the decision in the City of New York *vs.* Milne, is simply that the State may lawfully require to be informed of the character of the passengers who enter her ports from abroad. Such a right would seem to be founded in the simplest principles of justice towards her own citizens. It is a branch of the ordinary powers of the State in respect to its internal police government.

The Act of 1824 was not repealed in the revision of the statutes.

See list of acts repealed. See general repealing act, December 10th, 1828, Vol. 3, N. Y. R. S., page 149 (1st ed.).

The Revised Statutes of New York, which were adopted, or took effect, in 1830, contained a new and additional provision, and for the first time imposed a tax upon all immigrants. Sec. 1 R. S., pp. 440, 446, §§ 7, 8, 9, 10, 11.

In the case of Smith *vs.* Turner, reported with Norris *vs.* Boston, as "The Passenger Cases," in 7 How., 283. This act was declared by this court to be unconstitutional, in so far as it attempted to subject vessels or their owners to a tax or imposition of head-money upon, or on account of passengers from foreign countries.

Smith *vs.* Turner was an action against a ship-master to recover the head-money of a dollar each for the passengers on his ship. It was argued in 1845, re-argued in 1847 and again in 1848, and decided in January Term, 1849.

While this case was under advisement, the Legislature of New York passed the Act of May 5, 1847, Laws of 1849, ch. 195, p. 182. This act was a substitute for the provisions of the Revised Statutes. It required a report of passengers arriving and a payment of $1 for each passenger. But it required the Commissioners of Emigration to examine into the condition of all passengers arriving, and if any should be found in a condition of mind or body to be a public charge, instead of the poll-tax or duty, the owner of the vessel should be required to give a bond for such passenger to indemnify the authorities for his support. This act created the Commissioners of Emigration, and it regulated their duties, and the application of moneys received by them, both from the tax upon healthy and the indemnities for infirm passengers.

After the decision in Smith *vs.* Turner was announced by this court, and in the month of April in the same year (1849), the New York Legislature passed the Act of April 11, 1849; Laws of 1849, ch. 350, p. 504.

This act introduced a new scheme or contrivance for getting the revenue desired for the support of the Emigration

Commissioners and their establishments by a tax upon passengers. It is impossible not to see that the Act of 1849 is an attempt to evade the decision of this court, that a State could not impose a tax or head-money upon, or in respect to passengers from foreign countries, and to accomplish indirectly what had been condemned when attempted directly.

The manifest object and intention of this new and ingenious contrivance was to raise this revenue from the carrying of passengers for the general use and purposes of the Commissioners of Emigration, without coming in conflict with the doctrines enunciated by this court and the provisions of the Constitution as here expounded. The passenger carrier is required to give a bond to indemnify the State of New York for every passenger landed, whether the passenger remains in the State, or is to pass directly through to other States or countries, and whether rich or poor, well or sick, young or old, competent or disabled to support himself. This imposition or requirement of itself we contend to be a violation of the Constitution. But the obtaining such bonds was not the object of the act. It was well understood and obvious, that such bonds not only would not, but could not be given as required by this act. The real object of the legislation is disclosed by the succeeding provisions, which authorize the parties liable to be called upon for these bonds to commute in the case of every passenger for this bond, by the payment of a specified sum as a tax or head-money. Of course the owners of a steamer bringing hundreds of passengers pay the tax demanded of $1.50 per head, instead of, and to avoid being compelled to give a bond of $300, with sureties for every passenger, and a continuing liability for five years. The law thus accomplishes the desired object of securing a revenue by a tax of $1.50 for every passenger landed within the port.

The other provisions of the statutes made their object and scope still plainer, if any light were needed on that point. While the device of demanding a bond for every passenger, and allowing the owners to avoid giving it by paying the tax which, in the first act, was simply demanded as such, is provided for in the Act of 1849; the same act retains the

provision from the original act requiring security for every person imported who shall be found infirm or incapable of supporting himself. These bonds in such cases are in addition to the money-payment for commutation. These provisions reach every case in which such bonds are fairly or justly demanded, or in which they were originally required. The provision for demanding a bond for every passenger is manifestly a mere attempt to collect and enforce an unconstitutional tax, by a contrivance to evade the decision which had condemned its direct imposition.

III.

The acts of the Legislature of New York, under which bonds or a tax are demanded for passengers brought from foreign countries, are claimed by the appellants to be in violation of the following provisions of the Constitution of the United States:

Article 1, sec. 8: "The Congress shall have power—3, to regulate commerce with foreign nations and among the several States."

Sec. 10, subd. 2: "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be actually necessary for executing its inspection laws. No State shall, without the consent of the Congress, lay any duty of tonnage."

It is contended that these laws of the State of New York are regulations of commerce which a State has no power to make, and the provisions exacting head-money for immigrants are an attempt to lay an impost or duty on imports.

IV.

Commerce includes navigation; it means intercourse, and includes all the instruments by which intercourse is carried on.

It includes also all the subjects of such intercourse, and the transportation of persons as much as that of property.

"Commerce is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse. All America understands the word commerce to include navigation."

"If this be correct, no clear distinction is perceived between the power to regulate vessels employed in transporting men for hire and property for hire."

The section which restrains Congress from prohibiting the migration or importation of such person as any of the States may think proper to admit until the year 1808, has always been considered an exception from the power to regulate commerce, and certainly seems to class migration with importation. Migration applies as appropriately to voluntary as importation to involuntary arrivals; and, so far as an exception to a power proves its existence, this section proves that the power to regulate commerce applies equally to the regulations of vessels employed in transporting men who pass from place to place voluntarily, and those who pass involuntarily."

Ch. J. Marshall in Gibbons *vs.* Ogden, 9 Whea., 189, 190, 215, 216.

The transportation of passengers is regulated by Congress. More than two passengers for every five tons of the vessel are prohibited; and the master is required to report to the collector a list of the passengers from any foreign port, stating the age, sex and occupation of each, and the place of their destinations. If the transportation of passengers is a branch of commerce, of which there can be no doubt, it follows that the act of New York in imposing

this tax is a regulation of commerce. It is a tax upon a commercial operation, upon what may in effect be called an import.

In a commercial sense no just distinction can be made as regards the law in question between the transportation of merchandise and passengers. In the transportation of both, the ship owner realizes a profit—and each is the subject of a commercial regulation by Congress. When the merchandise is taken from the ship, and becomes mingled with the property of the people of the State, like other property, it is subject to the local law; but until this shall take place, the merchandise is an import, and not subject to the taxing power of the State, and the same rule applies to passengers. When they leave the ship and mingle with the citizens of the State they become subject to its law."

"A tax or duty upon tonnage, merchandise or passengers is a regulation of commerce, and cannot be laid by a State except under the sanction of Congress and for the purpose specified in the Constitution."

McLean, J., opinion in the Passenger Cases, 7 How., 405.

And see the opinion of Wayne, J., in the same cases at pp. 413, 414.

The doctrine that persons are the subjects of commerce and the transportation of passengers is as much a part of commerce as the transportation of merchandise is asserted or conceded, in Crandall *vs.* Nevada, 6 Wall., 35; opinions of Miller, J. and Clifford, J., Railroad Co. *vs.* Fuller, 17 Wall., 560; Railroad Co. *vs.* Maryland, 21 Wall., 456.

V.

The power conferred by the Constitution upon the Congress of the United States to regulate commerce is exclusive,

and permits no action or interference by the States in any case where the subject of the power is national, or admits one uniform system of regulation.

Gibbons *vs.* Ogden, 9 Whea., 1.
The Passenger Cases, 7 How., 283.
Ex parte McNeil, 13 Wall., 236.
The State Freight Tax Cases, 15 Wall., 232, Judge Strong's opinion.
Railroad Co. *vs.* Fuller, 17 Wall., 560, Judge Swayne's opinion.

VI.

The immigration of foreigners to this country, their transportation to, and admission at, the port of one State, for the purpose of passing through that State to another State for residence in the latter, and the whole subject of passengers from foreign ports to and through the various States of the Union, is palpably a subject which is national in the broadest sense. It not only admits of one uniform system of regulation, but the interest of the nation, and of the interior States, and the nature of a government—which has at once to protect those interests, and to conduct and maintain relations with foreign contries, whence these passengers, come either for temporary or permanent residence, permit only one uniform system of regulation of that branch of commerce, which is occupied in the transportation of these passengers.

See reasoning of Judge Strong in the State Freight Tax, Cases, 15 Wall., 232, and of the dissenting opinion of Judge Miller, concurred in by Judges Field and Hunt; Railway gross receipts, Case, 15 Wall, 297; see also Judge Curtis, speaking for the majority of the court, in Cooley *vs.* Portwardens, 12 How., 299, 319; and Judge Bradley in Railroads &c. *vs.* Maryland, 21 Wall., 472.

VII.

If this Act of the Legislature of New York, had simply required the owner, master or consignee of every vessel bringing alien passengers to the port of New York, to pay $1.50 for every such passenger, imposing a penalty in case of failure to pay, and making the penalty a lien on the vessel, collectible by attachment, it would have been explicitly condemned by the decision in the Passenger Cases, 7 How., 283, and by the whole line of authorities following them. Such a case would admit of no argument or question in this court.

But we contend, *first*, that requiring from, or on account of every alien who is brought to the port of New York, desiring to pass into another State, a bond in a penalty of $300, with two resident freeholders as sureties, conditioned to indemnify the State of New York against expense, is an interference with, or regulations of, commerce, which is condemned by the same principles which have condemned the imposition of a tax in money for, or on account of such alien; and is equally prejudicial to the interests of the nation, and of other States belonging to it.

And *second*, that this alternative of a bond offered, apparently to make the payment of a tax the election of the passenger or his carrier, is impracticable, would be an absolute bar, if it were carried out and insisted upon, to this species of commerce, and is in reality an evasion, a device to exact an unconstitutional revenue for State institutions, without apparently coming in conflict with the constitution as expounded by the courts, and that no such colorable and evasive contrivance will be tolerated by the law.

VIII.

The State of New York, by these statutes, has undertaken to prohibit the immigration of foreigners not only within

her own border, but to other States unless upon certain conditions. Every alien who lands and passes through the State of New York must give, or some one must give for him, a bond with resident sureties, and a specified condition. This is a regulation of this branch of commerce. It is, in fact, a most oppressive restriction upon the importation of alien passengers into the United States through the port of New York.

It was not because the law of New York, which was before the court in the passenger cases, imposed a tax upon the passengers or the carrier, that it was condemned; but because by the imposition of such a tax, the Legislature of a State undertook to subject the commerce of the country to a condition, and thereby to regulate the manner in which it should be conducted. Any restriction or condition required by a State of persons exercising the right of commerce and navigation under the laws of the United States, is a regulation of commerce: it attempts to prescribe the terms upon which persons shall be admitted into the ports of the United States, and it is therefore contrary to the grant of powers contained in the constitution to the Congress of the United States, exclusively to regulate those terms. This is one of those rules adverted to by Judge Swayne in Railroad Co. *vs.* Fuller, 17 Wall., 568, which must from the nature of things, unlike pilotage, or harbor regulations, be uniform throughout the country. Here, therefore, the grant of authority to Congress is necessarily as exclusive, as if it had been declared so to be by the constitution in express terms.

IX.

An act of a State Legislature requiring a bond to indemnify the State against the support of any alien debarking at a port within its limits, for the purpose of passing through its border to another State, cannot be justified or sustained as a police regulation.

Such a law does not relate to matters or persons within the territory of the State, nor is it confined to persons who are, or even to such as intend to become, residents of the State. It is not admitted that a State can prescribe conditions without which persons admitted by the laws and treaties of the United States, and brought here by commerce carried on under those laws and treaties, should not be allowed to settle or reside within its limits. But that is not this case. These statutes do more; they require that no alien shall be allowed even to pass through the State of New York, without giving a bond and finding resident sureties.

The acts now before the court in requiring this bond operate upon the immigrants as passengers, impose a condition upon their landing, and furnish the means of enforcing that condition by process against the vessel which has transported them. These statutes do not operate upon these persons after they leave the ship, and become mingled with the citizens of the State, for this these persons never do. But the statutes apply to them as passengers, and to the vessel which transported them, and its owners, before they have lost their character as passengers and subjects of commerce.

X.

The statutes in question are not an exercise of a police power, which it may be claimed, or might be admitted to belong to the States respectively, to protect themselves against paupers, vagabonds or criminals,

It might be admitted that such persons are not legitimate subjects of commerce, any more than infected, unwholesome or poisonous merchandise. Such persons might be prohibited from mingling with the mass of the population of a State, just as such goods may be prevented from mingling with the mass of merchandise within its limits.

But, *First.*—The statute now in quession, as has already been

observed, does not apply to residents of the State, or persons intending to become such. Its requirements are as much conditions to passing through the State as to residing in it.

And *Second*.—The requirement of this bond or the payment of the alternative tax, is not limited to paupers or fugitives from justice. It neither operates nor is intended to exclude from the State those persons who have no rights of national intercourse, and are not recognized as subjects of international traffic. This is a universal requirement in respect to all aliens arriving at the port of New York. Such immigrants merely passing through the State, and not paupers nor criminals, are not proper subjects of police power, and this act is not a proper exercise of such power.

See Mr. Justice Wayne's opinion in the Passenger Cases, 7 How., 426, and Mr. Justice Catron's, 7 How., p. 448.

What makes it beyond doubt that these opinions are not the exercise of a power of police regulations, is that the same act as already stated contains a provision that the Emigration Commissioners are to examine every vessel and to report every passenger who is insane or maimed or incapable of supporting himself, and for every such person they may require a bond in a penalty of $500 to indemnify the State for the support of such person in addition to the commutation tax. This bond may be required at any time within thirty days after the arrival of the passenger, evidently after it may become apparent that the person is incapable of maintaining himself, and intends to remain within the State and so to become chargeable upon its resources. And what is even more material, it may be required of, or on account of a person for whom the tax is also exacted. This provision for a second bond in case of an immigrant, really becoming a charge to the State, may be said to be an exercise of its internal police power with respect to a class of persons who are properly subjects of such a power. This clearly makes the distinction. But the provisions now in question apply to persons who are not subjects of police regulations. They are exactions of persons not even claimed to be paupers or criminals, or likely to become such, and not for leave to reside

in, but to pass through the State. The other provisions in the same act which apply a police power to its proper objects, seem to show more clearly that the part of the statute now in question is not and was not intended to be a police regulation.

See Judge Grier's opinion Passenger Cases, 7 How., 460.

State v. Constitution, 42 Cal. 578
Matter of Ah Fong, 13 Am. Law. Reg. N.S. 761

XI.

The assertion of such a right as is here claimed by a State to require a bond, or the payment of a tax for every immigrant involves the assertion of a right which is practically unlimited and prohibitory of all immigration. The interior States will be at the mercy of those upon the seaboard. If a bond of $300 may be demanded for every such passenger, why may not a bond of twice or ten times that amount? Why may not a deposit of money or any other condition which may be most advantageous to the revenues or interest of an Atlantic State?

And if the State of New York may do this, why may not any other State on whose canals or railroads these passengers are to be transported, interpose a similar barrier at their entrance, until in effect the States, for the purpose of swelling their own revenues, may establish and enforce laws of non-intercourse, and by demands of bonds or taxes put an end to the transportation of foreign passengers, not only to our shores, but within our borders?

XII

A little consideration, indeed, will show that the statute now before the court, in that part of it which requires bonds

for all the passengers, is so oppressive as to be actually destructive of this branch of commerce, if it were enforced, and if it did not afford and invite an escape by means of the commutation money or head-tax which is allowed as an alternative to the bond.

A moment's consideration of the nature and severity of the burthen imposed by these laws will show that the giving of the bonds would virtually put an end to the business of transporting passengers to this country.

The average number of passengers arriving at this port may be put down at 100,000 yearly. It has, in fact, in some years, amounted to as many as 200,000, although recently, in consequence of commercial and financial disturbances, the number may have diminished. Upon the average number first mentioned, the bonds required by shipowners for these passengers would amount in each year to $30,000,000. Two sureties are required to be furnished for each of the bonds, who must be owners of real estate in this State, equal at least to the amount of the bond, and the liability continues for five years. Every year this process would have to be repeated, and in five years' time, before any of the bonds could be satisfied, the total amount would be $150,000,000. Surely judicial notice will be taken of the fact that such an exaction would effectually put a stop to the transportation of passengers.

XIII.

The requirement of these bonds is not only impracticable and destructive of the branch of commerce to which it is applied—not merely its regulation, but its prohibition—but it is merely an attempt to evade the provisions of the Constitution, and to exact a tax which that instrument forbids. The real object, and the plain effect of this law is to levy a tax of $1.50 on every alien passenger. The only difference between this and the former statutes of the State, once condemned by

this court is, that now what was at first done directly is now attempted indirectly.

If it be said that the payment of the commutation money is voluntary, or that the owner of the ship elects, instead of giving the bonds required by the act, to pay the money, it will be seen that this is simply an election to do one of two things prescribed to him as a condition of carrying on his trade; and in paying the commutation money he chooses the lighter of the two burdens. And it is also obvious that the act is framed to constrain the shipper to pay the tax. Any consideration of the nature and severity of the burdens imposed by these provisions in respect to bonds, will show that there is really no election given in the matter; the owner of the ship is forced to pay the commutation money or cease from his business.

We submit, therefore, that this law is to be treated just as if it simply imposed a tax upon alien passengers.

The history of the legislation of New York, already given, proves that such was its design; and the working of the law shows that such is its effect.

XIV.

The statute gives two alternatives—imposes one or the other of two conditions for the entry of every alien into the State—a payment of money or a bond. Each is required; the one as much as the other. The formal arrangement of the statute, placing the bond first cannot alter its legal effect.

If the act had read, that the officer of the State or city may require the consignee of every vessel bringing alien passengers to pay $1.50 for every such passenger, or to commute for such payment by giving a bond with sureties and a certain condition, it might seem at first that the imposition of the tax was more direct and compulsory. But would there be really any difference? In either case the

effect of the statute is to impose and compel the payment of the tax, unless it is escaped by the giving a bond. And this alternative is so manifestly impracticable that the act operates like its predecessor, simply to levy the tax.

Courts will look through such devices to the real object of a law or a transaction. That which cannot be done directly will not be permitted to be accomplished indirectly.

A state cannot tax exports by requiring a stamp on bills of lading.

Almy *vs.* California, 24 How., 169.

A state cannot tax imports by requiring the importers to pay for a license to sell them.

Brown *vs.* Maryland, 12 Whea., 419.

A law which imposes a fine or imprisonment upon the master of a vessel for not taking a pilot, compels the taking a pilot.

The *China*, 7 Wall., 53.

Borrowing the emphatic words of Judge Miller, used in his dissenting opinion in the case of the State Tax on Gross Receipts (15 Wall., 299), but enunciating a principle equally maintained by the majority of the court and the judge who delivered that opinion, and modifying that language to apply it to this case, without, as we submit, in the least misapplying or perverting the principle, we say: By no device or evasion can a State compel alien immigrants to pay to it a tax, contribution or toll for the privilege of entering and being transported through that State.

XV.

The Statutes of the State of New York, now before the court, are not only regulations of commerce upon a subject, which requires a uniform system applicable to the whole

country, and therefore exclusively within the power of Congress; they are also regulations of commerce in respect to matters in regard to which Congress has legislated and exerted its power. And they are in conflict with the legislation of Congress, and with the treaties of the Government of the United States with foreign powers. Surely passengers admitted free with their working tools and household furniture by Act of Congress, or a treaty, cannot be taxed or subjected to any conditions of entry by a State law, any more than duties can be imposed by a State on goods free by the laws of Congress.

Besides the naturalization, and other acts encouraging the drawing hither aliens, and natives of other countries, the Federal statute books contain from the first, acts regulating the transportation of passengers, and protecting such passengers. Exceptions and privileges are given to such persons. Their professional books, tools, and household furniture, are exempted from duty, and they may land with these effects, free of any imposts, etc. Acts of March, 1799, April 27, 1816, March 2, 1819, Aug. 30, 1842, July 30, 1846.

So also privileges to enter our territories are given to the citizens and subjects of foreign countries by our commercial treaties. Mr. Jay's treaty with England, and the treaty of 1815, contained such provisions. So do our similar treaties with other powers.

Can any State nullify these treaties by enacting that subjects of these countries shall not enter, or even shall not remain within their limits? Can any State impose any conditions on the immigration or passage of such persons? If any State of the Union may impose any tax or any condition, it may increase such tax or condition until it amounts to a prohibition. And if one may do it, all may do it.

The power to say whether aliens shall come or be brought to any of our ports, or shall remain within our territories, must rest exclusively with the Federal Government, which has the regulation of the commerce which brings such persons, and makes treaties with the nations whence they come.

XVI.

The views which have now been presented, are but an application of the decision and a repetition of the reasoning of the court, and of the several judges who delivered the prevailing opinions in the Passenger Cases, 7 How., 283. These opinions, as has been pointed out in this argument, and as the more recent cases also abundantly prove, show that the decision in the City of New York *vs.* Milne, 11 Pet. 102, sustained only the right of a State to require a list of the names, ages, etc., of persons entering its domain, as a reasonable police power, and nothing more.

XVII.

The health and quarantine laws of the several States stand upon totally different grounds. It will not be contended that the principle invoked to support, them will sustain such statutes as those now before the court.

The pilotage laws of the States affect a subject which admits of various and special legislation in respect to every harbor. Besides these laws have been expressly affirmed, and in fact adopted, by acts of Congress.

See Act of Aug. 7, 1789.

XVIII.

If the question of remedy, or the right to proceed by injunction, should be considered by the court upon this appeal, we submit that an injunction is an appropriate remedy in such a case.

It is a case of irreparable injury. It is a case where only this equitable remedy can prevent a multiplicity of suits.

A refusal to obey the State law subjects the owner of the vessel to a penalty of more than *three hundred times* the amount of the commutation money, and for the payment of this penalty the vessel is exposed to immediate seizure. The vast disproportion between the commutation money and the penalty operates as constructive duress in compelling the shipowner to submit to an unconstitutional law.

The question of the constitutionality of the law cannot be tried by the shipowner in resisting the payment of the penalty at law, except with great hazard, trouble, inconvenience and expense in procuring a re-delivery of the property seized.

The case is therefore clearly one of irreparable injury.

The plaintiffs are also the owners of divers other vessels engaged in transporting passengers to this port under similar circumstances, and unless they shall give bonds or pay commutation moneys in these latter cases, they will be exposed to a multiplicity of suits on the part of the Commissioners of Emigration.

In support of the plaintiff's right to an injunction, the following cases are cited:

Cutting *vs.* Gilbert, 5 Blatch., 259.
Fisk *vs.* Union Pacific R. R. Co., 10 Blatch., 318.
Wiley *vs.* Niles, 3 Daly, N. Y. C. P., 172.
Crane *vs.* McCoy, U. S. Circuit Court, Ohio, 1st Bond, 422.
Osborn *vs.* U. S. Bank, 9 Whea., 738, 938.
See also U. S. Tonnage Cases, 12 Wall, 204.
Peete *vs.* Morgan, 19 Wall., 591.

In these two latter cases, certain laws of the State of Texas were held by the Supreme Court to be unconstitutional, and the injunctions which have been awarded restraining their enforcement by the officers of the State were sustained.

So in the early case above cited of Osborn *vs.* The U. S. Bank, memorable for the opinion then delivered by C. J. Marshall.

XIX.

Independently of these general views, there is one aspect of this case in which a bill in equity for an injunction will be clearly seen to be the appropriate remedy.

The complainants are permitted to elect to give a bond for every passenger. They have also a right to test the power of the State to exact such a bond. To do this they are not bound to incur the penalty of the act. They may bring the validity of the statute to a direct test, and this can only be done by invoking a court of equity to prevent the exaction of these innumerable bonds. No suit at law will reach such a case. It is a clear case for the interposition of a court of equity.

XX.

The decree appealed from should be reversed, and the case remitted to the Circuit Court, with directions to make the injunction prayed for in the bill of complaint perpetual.

HENRY NICOLL,
JAMES EMOTT,
Of Counsel for Appellants.

U. S. SUPREME COURT.

JOHN HENDERSON AND THOMAS HENDERSON,
Plaintiffs and Appellants,

against

WILLIAM H. WICKHAM, MAYOR OF THE CITY OF NEW YORK, AND THE COMMISSIONERS OF EMIGRATION.
Defendants and Respondents.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Plaintiffs and ~~Respondents~~ Appellants Brief.

HENRY NICOLL & JAMES EMOTT,
Of Counsel for Plaintiffs and Appellants.

Brief and Points for the Commissioners of Emigration.

SUPREME COURT OF THE UNITED STATES,

No. 880.

JOHN HENDERSON AND THOMAS HENDERSON, APPELLANTS,

vs.

WILLIAM H. WICKHAM, MAYOR OF THE CITY OF NEW YORK, AND THE COMMISSIONERS OF EMIGRATION.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN E. DEVELIN,
Of Counsel for
The Commissioners of Emigration.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

Supreme Court

OF THE UNITED STATES.

(In Equity.)

JOHN HENDERSON AND THOMAS HENDERSON,
Appellants,

vs.

THE COMMISSONERS OF EMIGRATION, IMPLEADED, &C.,
Appellees.

This appeal was taken by the appellants from a decree of the Circuit Court for the Southern District of N. Y., sustaining a general demurrer to the bill of complaint, and dismissing it with costs. The suit was brought, so far as the defendants the Commissioners of Emigration are concerned—

I.—To obtain a decree of the court to the effect that the passenger laws of the State of New York, so far as they relate to alien passengers from foreign

countries arriving at the port of New York on their way to other States and countries, and not intending to become citizens of the State of New York, may be declared to be in violation of the Constitution of the United States, and void.

II.—For a perpetual injunction restraining them from proceeding to enforce the penalties under the said passenger laws by warrant of attachment against the steamship *Ethiopia*, for refusal of the consignees of that vessel to give the bond mentioned in those laws, for three named passengers brought by her from Glasgow, in Scotland, to the port of New York, all of whom are averred to have been aliens, and to have come from the port of Glasgow as such passengers for the purpose of going to States and countries other than the State of New York, and who had landed at at the port of New York only for such purpose, wtihout any intention of becoming citizens thereof.

The bill of complaint sets forth as grounds to support the suit, and to obtain the aforesaid relief:

I.—That the complainants, at the time of bringing the suit, were aliens and residents of Scotland, in the kingdom of Great Britain, and owners of the steamship *Ethiopia*.

II.—That the said steamship arrived at the port of New York on 24th June, 1875, from the port of Glasgow aforesaid, having on board, as passengers, John Tully, Thomas McClure and James McElligott, all aliens, who came as such passengers on their way from said port to other states and countries outside of the State of New York, and landed at the port of New York only for such purpose, and without any intention of becoming citizens of the said State.

III.—That if the complainants, as owners of the said steamship, do not give certain bonds required by the passenger laws of the State of New York, the defendants, the Commissioners of Emigration, will take legal proceedings to recover the penalty of $300 for each of these passengers, and will, by warrant of attachment, seize the said steamship and put the complainant to great trouble, inconvenience and expense in procuring the redelivery of their property when so attached, and that they will thereby sustain actual and material injury.

IV.—That the complainants are owners of divers other steamships sailing and plying between Glasgow and New York, bringing large numbers of passengers, who arrive at the port of New York for the purpose of going through the State of New York to other States and countries, and that in case the complainants refuse to give bonds or pay commutation for these last mentioned passengers they will be exposed to a multiplicity of suits or actions by the Commissioners of Emigration.

To this bill of complaint the defendants interposed a general demurrer.

Extracts from the passenger laws of the State of New York from the institution of the Commissioners of Emigration in 1847 to the present time, are contained in the bill of complaint, but these extracts are incomplete, and do not convey a correct idea or constitute a summary of the laws in force and applicable to this action at the date of the arrival of the steamship *Ethiopia*.

The following is the substance of the laws then in force and applicable as aforesaid.

1. Authorizing the appointment of certain persons as Commissioners of Emigration, by which name they should be capable of suing and being sued, and imposing upon them the duty of providing for and support-

ing emigrants who might require public aid. And also imposing upon the commissioners the further duty of examining into the condition of the passengers, and if there should be found among them any lunatic, idiot, deaf, dumb, &c., to report the same to the mayor, who should, unless a bond should have been given, require in addition to the commutation money, a bond in the penalty of $500 conditioned to indemnify and save harmless the Commissioners of Emigration and every city, town or county, &c., from the cost or charges which they or it might incur for the support of the person named in the bond within five years from its date.

Sec. 4, ch. 195, Laws 1847.
Sec. 1, ch. 302, Laws 1873.
Sec. 3, ch. 195, Laws 1847, as amended by § 4 of chapter 523, Laws 1851.

2. That within twenty-four hours *after* the landing of any passenger from any ship or vessel arriving at the port of New York * * * from any country out of the United States, the master or commander of any ship or vessel from which such passenger or passengers *shall have been* landed, should make a report in writing to the mayor of the city of New York of the names, place of birth, last legal residence, age and occupation of such passengers, which report should also specify whether any of the passengers so reported were lunatics, idiots, deaf, dumb, blind, infirm, &c.

Sec. 3, ch. 523, Laws 1851.

3. That it should be the duty of the mayor, by an endorsement to be made on the said report, to require the owner or consignee of the ship or vessel from which such persons were landed to give a several bond to the people of the State of New York in the penalty of three hundred dollars for each and every passenger included in said report. That it should be lawful for any owner or consignee at any time within twenty-four

hours from the time of the landing of such passenger or passengers from any such ship or vessel in the port of New York to commute for the bond or bonds so required, by paying to the officers named in Section 7 of ch. 523 of the Laws of 1851, the sum of $1.50 for each and every passenger reported as aforesaid, the receipt of which sum should be deemed a full and sufficient discharge from the requirements of giving the bonds.

Sec. 7, ch. 523, Laws 1851.
Sec. 1, ch. 475, Laws 1871.

4. That the neglect of the owner or consignee to give the required bonds in case he had not exercised his option of commuting the bonds by paying $1.50 should subject him to a penalty of five hundred dollars for each and every passenger on whose account such bond had been required, and that such penalty should be a lien upon any ship or vessel whose owner or consignee should have incurred such penalty.

Sec. 2, ch. 339, Laws 1850.
Sec. 36, ch. 147, Laws 1856.

5. In case any of the persons for whom commutation money had been paid, or for whom a bond had been given, should become chargeable, &c., the commissioners are to pay the expense from such commutation money and the money collected on such bonds.

§ 5 of ch. 195, Laws 1847.

6. That such liens upon the vessels might be enforced and collected by warrant of attachment, as provided by title 8 of chap. 8 of the third part of the Revised Statutes of the State of New York, and that al the provisions of that title should apply to such penall ties.

Sec. 13, ch. 195, Laws 1847, as amended by sec. 1 of chap. 339, Laws 1850.

The aforesaid title 8 of second Revised Statutes, page 493 (m. pg.), is the provision for the collection of de-

mands against ships and vessels. Any ship or vessel seized in any proceeding under it may be released upon the application of the owner, consignee, agent or commander of or any person interested in the vessel, by giving a bond, conditioned for the payment of all clains or demands which had then been exhibited against the vessel.

Sec. 12, 13 and 14 of said title 8, 2d N. Y. Rev. St., pages 495–6 (m. p.).

In may be proper to remark here *in limine* that this proceeding by attachment "is not a proceeding *in rem*, "as known and practiced in Admiralty * * * to "enforce a maritime lien in the property."

Leon *vs.* Galceran, 11 Wall, 185, at p. 189.

POINTS

On the part of the Commissioners of Emigration.

I.

The averments of the bill of complaint fail to show any equity in the complainants or to give them any *status* in court.

(*a.*) The gravamen of the bill of complaint is that the passenger laws of the State of New York being, as the appellants allege, unconstitutional, would, if enforced against them by reason of their refusal to comply with the requirements of such laws in the cases of passengers landed from the steamship *Ethiopia* on the 24th of June, 1875, inflict actual and material injury upon them; and if they refused to comply with such laws in regard to passengers landed from subsequently arriving ships belonging to them, the enforcement of such laws would produce a multiplicity of suits.

(*b.*) *Numerous* suits founded upon violations of the same law, at different times and in regard to different subjects, do not constitute "a multiplicity of suits" as that phrase is used and understood by the courts.

Trustees of Huntington *vs.* Nicoll, 3 John R., at p. 577.
Mitford's Pleadings in Chancery, 145.

(*c.*) Even if the complainants are correct in their idea that there would thus arise a multiplicity of suits, it is essential to their status in a court of equity where they ask an injunction to restrain the commencement of these suits, that their rights should first have been established at law.

The present action is in the nature of a bill of peace, which will not be entertained until after such establishment of the plaintiffs' rights.

Eldridge *vs.* Hill, 2 John. Ch., 281.
West *vs.* Mayor, 10 Paige, 539.
Oakley *vs.* Mayor, cited in do.
Story Eq. Jur., § 852, 860.
Tenham *vs.* Herbert, 2 Atk., 483.

And never to prevent the defendant from suing at law where the rights of the parties depend upon a question of law merely.

West *vs.* Mayor, &c., *supra.*

(*d.*) The invalidity of the law attempted to be enforced is a good defense to an action or proceeding brought for its enforcement; consequently the extraordinary powers of a court of equity will not be put forth to prevent a party from bringing an action in which it appears, by the averments of the bill to restrain him, that he cannot succeed at law.

Cases last cited.

II.

Whenever a State has not parted with and delegated to the general government the right to enact laws upon any particular subject, its authority to legislate thereon is absolute and without limit, except so far as restrained by its own constitution.

Thus, as an illustration, the State of New York has not parted with the right to tax the property within its limits, except that of the general government.

There is no limit to the exercise of this power, and the court will not inquire into the manner or expediency of the mode adopted by the Legislature. Its power is absolute, and not subject to review.

Nathan *vs.* Louisiana, 8 How., 73.

This is true, even if the tax indirectly affect commerce.

In the above case the court, McLean, J., says: "If "the power of taxation * * * may be restricted * * "on the ground that the tax may have some indirect "bearing on foreign commerce, the resources of a "State may be thereby essentially impaired."

And in the passenger cases the same Justice uses these words: "A State cannot regulate foreign com- "merce, but it may do many things which more or "less affect it. It may tax a ship or other vessel used "in commerce the same as other property owned by its "citizens. A State may tax the stages in which the "mail is transported, but this does not regulate the "conveyance of the mail any more than taxing a ship "regulates commerce; and yet in both instances the "tax on the property in some degree affects its use."

Passenger cases, 7 How., 402.

The court again, in the case of the city of New York *vs.* Miln, 11 Peters, 137, employs this language, partly adopted from Gibbons *v.* Ogden: "Whilst a State is

" acting within the legitimate scope of its power as " to the end to be attained, it may use whatsoever " means, being appropriate to that end, it may think " fit, although they may be the same or so nearly the " same as scarcely to be distinguishable from those " adopted by Congress, acting under a different pow- " er; subject only, say the court, to this limitation: " that in the event of collision the law of the State " must yield to the law of Congress."

The following is the very language of Marshall, C. J.:

" Inspection laws form a portion of that immense " mass of legislation which embraces everything within " the territory of a State not surrendered to a general " government; all which can be most advantageously " exercised by the States themselves. Inspection laws, " quarantine laws and health laws of every description, " &c., are component parts of this mass. No direct " general power over these objects is granted by Con- " gress, and consequently they remain subject to State " legislation. If the legislative power of the Union can " reach them, it must be for national purposes (p. 203). " If a State in passing laws upon subjects acknowledged " to be within its control, and with a view to those " subjects shall adopt a measure of the same character " with one which Congress may adopt, it does not " derive its authority from the particular power which " has been granted, but from some other power which " remains with the State and may be executed by the " same means.

" All experience shows that the same measure or " measures scarcely distinguishable from each other " may flow from distinct powers, but this does not " prove that the powers themselves are identical. Al- " though the means used in their execution may " sometimes approach each other so nearly as to be " confounded, there are other situations in which they " are sufficiently distinct to establish their individ- " uality.

P. 204.

The rule applied in the case of the power of taxation before cited is but the particular application of a general principle prevailing in regard to State authority over subjects of legislation not yielded up by it.

Steamboat Co. *vs.* Port-Wardens, 6 Wall., 31.

(*a.*) The State of New York has not parted with but retains its right to enact laws necessary or proper for its protection against disease, pauperism, the importation of criminals, &c.

Thus McLean, J., in the passenger cases, at page 400, says:

"In giving the commercial power to Congress the State did not part with that power of self-preservation which must be inherent in every organized community. They may guard against the introduction of anything which may corrupt the morals or endanger the health or lives of their citizens. Quarantine and health laws have been passed by the States, and regulations of police for their protection and welfare."

Such laws are merely police regulations, and being within the reserved powers of the State, are entitled to the benefit and support of the same general rule and principle which upholds any tax laws made by it.

(*b.*) The State is the sole judge as to the means it will employ to effect its object in this particular branch of its admitted powers.

Passenger cases, 7 How., 287.
N. Y. *vs.* Miln, 11 Pet., 102.
Opinion of Court, Barbour, J.

The right of a State to enact inspection laws to prevent, not the actuality, but the possibility of disease, is firmly established by the adjudications of this court.

Gibbons *vs.* Ogden, 9 Wheat., 196.
City of N. Y., 15 Miln, *supra.*

In this Miln case the court, at page 142, say: "The "power to pass inspection laws involves the right to "examine articles which are imported, and are, there- "fore, directly the subject of commerce; and if any of "them are found to be unsound or infectious, to cause "them to be removed, or even destroyed. But the "power to pass these inspection laws is itself a branch "of the general power to regulate internal police."

In the same manner the right exists to establish a police regulation against the possibility of pauperism, not by exclusion of the subject, but by anticipatory legislation against its burdens.

III.

The passenger laws of the State of New York are a police regulation.

(*a.*) They impose no tax, but simply provide for a bond for each passenger landed in the city of New York, the condition of which is to indemnify and save harmless the Commissioners of Emigration, and each and every city, town and county within the State of New York, from any further cost or charge which said commissioners or any such city, town or county shall incur for the maintainance or support of the person or persons named in such bond or any of them, within five years from the date of such bond.

§ 4 of Chap. 523 of the Laws of 1857.

This condition shows the entire object of the State to be to protect itself against the pauperism of any of the immigrants. It does not matter whether it is the intention of the immigrant at the time being to remain in the State or pass through

it, as there is always a *locus penitentiæ*, and he may change his intention or be taken ill, or injured by accident before leaving the State, and become a public charge, or may, within the time mentioned in the bonds, which is the shortest period within which he can become a citizen of the United States (5 years) return to the State and receive support from the public.

If the law is valid as to passengers intending to remain here, the impossibility of following and determining whether those professing to have the intention of leaving have actually carried out that intention, would, *ex necessitate rei*, and for the purposes of government, justify the requirement of a bond from the latter as well as the former.

If none of the contingencies expressed in the bond come to pass, it expires by its own limitation. It becomes effective only in case the party bonded does become a pauper within the State.

To guard against these contingencies the bond is required. The State, in the exercise of its admitted power of self-protection, has adopted this mode of attaining this end. The court will not enquire into the expediency of the mode in which the power has been exercised.

Passengers Cases, N. Y. *vs.* Miln, *supra.*
Varick *vs.* Smith, 5 Paige, 160.

Thus it will be seen that to these laws the following language of Barbour, J. in City of New York *vs.* Miln, 11 Peters, 133, is as applicable as if used in regard to them :

"To decide this" (viz., whether the law of the State of New York, requiring the master of a vessel to report his passengers was a police regulation) "let us examine its purposes, the end to be attained and the means of its attainment."

"It is apparent, from the whole scope of the law, that the object of the Legislature was to prevent New York from being burdened by an influx of persons brought thither in ships, either from foreign countries or from any other of the States; and for that purpose a report was required of the names, places of birth, &c., of all passengers, that the necessary steps might be taken by the city authorities to prevent them from becoming chargeable as paupers.

"Now, we hold that both the end and the means here used are within the competency of the States, since a portion of their powers were surrendered to the Federal Government. Let us see what powers are left with the States. The *Federalist*, in the 45th number, speaking of this subject, says the powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the State.

"And this court in the case of Gibbons *v.* Ogden, 9 Wheat., 203, which will hereafter be more particularly noticed, in speaking of the inspection laws of the States, say, they form a portion of that immense mass of legislation which embraces everything within the territory of a State, not surrendered to the General Government, all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, &c., are component parts of this mass.

"Now, if the act in question be tried by reference to the delineation of power laid down in the preceding quotations, it seems to us that we are necessarily brought to the conclusion that it falls within its limits. There is no aspect in which it

can be viewed in which it transcends them. If we look at the place of its operation we find it to be within the territory, and therefore within the jurisdiction of New York. If we look at the person on whom it operates he is found within the same territory and jurisdiction. If we look at the persons for whose benefit it was passed, they are the people of New York, for whose protection and welfare the Legislature of that State are authorized and in duty bound to provide.

"If we turn our attention to the purpose to be attained, it is to secure that very protection and to provide for that very welfare. If we examine the means by which these ends are proposed to be accomplished, they bear a just, natural and appropriate relation to those ends."

The laws in question fully meet all these requirements to constitute a police regulation, and are not in principle different from the law at issue in the *Miln* case. There the question was as to the validity of a law requiring the master of a vessel to make a report of his passengers; here it is requiring an owner to execute an instrument to indemnify the people of the State against any charges or expenses for public aid required by and extended to passengers introduced by the vessel which he may own. Neither property nor money is required of him.

Being, then, a police regulation within the scope of the authority of the State, they will be upheld, although they may indirectly affect commerce.

They are no more a violation of that part of the constitution conferring on Congress power to regulate commerce, than quarantine, pilot or inspection laws which directly affect both the instruments and subjects of commerce—seamen, ships and cargoes as such.

Neither do these laws compel the payment of

any money by way of commutation, tax or otherwise. They simply afford the option to the party whose duty it is to give the bond, to avoid doing so by paying a certain sum and nothing more. In this they differ from the laws under consideration in the Passenger Cases, which were as to a tax.

Catron, J., in these cases, sums up his conclusions as follows:

"In short, when the *tax* in question was demandable by the State law and demanded, the ship rode in the harbor of New York with all persons and property on board as a unit belonging to foreign commerce. She stood as single as when on the open ocean, and was as exempt from the State taxing power (p. 452).

Justices Wayne and Greer entertained the same views (pp. 412–413–452).

The present laws further differ from the above law, in the fact that they begin to operate only after the ship ceases to ride in the harbor with all or any persons on board.

Nor is the requirement of the bond an impost within the meaning of the first clause of section 10 of the second article of the constitution. The imposts there mentioned are of a pecuniary nature, as the net produce is by the same clause to go into the treasury of the United States. The first clause, too, of section 8 of the same article, being in the same matter, uses this word in a pecuniary sense. And a passenger is not an import (6 Wall., 35).

IV.

These laws do not affect either the instruments or

subjects of commerce as such, and are, therefore, not obnoxious to any constitutional objection arising out of the grant to Congress of the power to regulate commerce.

(*a.*) They do not operate at all upon the passenger. He is not required by them to do anything whatever; neither to give a bond nor pay money. They do not prevent or delay the landing of passengers, as they do not begin to operate until after the passenger has landed and is away from the vessel, and then they are pointed only at those interested in, and not directly at, the ship at all.

(*b.*) When they begin to operate, the ship is but a piece of property within the jurisdiction of the State, having ended her particular voyage and finished the commercial transaction involved therein. And the remedy given by these laws against the ship is based upon the indebtedness of, or rather the penalty incurred by, the owner or consignee by his default. The claim against the ship is a lien upon her, by reason of the debt of the owner, and is secured and may be collected thereby.

Leon *vs.* Galceran, *supra.*

The ship, then, in the case of these laws, does not differ from any other piece of personal property, as she is subject to attachment under these State laws for the debts of owners, to sale thereunder, to transfer of ownership thereby—to taxation and other incidents common to personal property.

McLean, J., in Passenger Cases, 7 How., at p. 402.

At the time she may be attached for the debt of her owner or consignee, she has ceased to be an

instrument of commerce as to that voyage, and as to the passengers who have landed from her.

The requirements of these laws are that within twenty-four hours *after* the landing of the passengers the master shall make his report to the mayor; upon this report so made the mayor shall indorse his requisition for bonds. The parties interested in the vessel are given twenty-four hours' time in which to furnish these bonds. It will thus be seen that the entire transaction is begun, carried on and finished after the particular commercial enterprise of transporting those passengers has terminated and whilst the vessel and all the parties to be affected are within the jurisdiction of the State of New York, and subject to its legislation and its courts.

The fact that these laws relate to an accomplished enterprise of commerce does not convert them into a regulation of commerce.

This *ex vi termini* must be something which operates to control, advance or impede the operations of commerce while being carried on.

In the words of Ch. J. Marshall in Gibbon *vs.* Ogden, 9 Wheat., at p. 196: "It is the rule by which commerce is to be governed."

V.

Even though these laws in their operation affect commerce, they are valid.

(*a.*) Congress has not exclusive jurisdiction to regulate commerce in all cases and under all circumstances. There are cases of a commercial nature in which the States may, in the absence of action by Congress, legislate.

It was not necessary for the court to decide this question of exclusive jurisdiction in the case of Gibbons *vs.* Ogden, which was a case involving simply the internal commerce between the States, or in the passenger case, 7 Howard, which was one of the imposition of a tax upon passengers who were there considered as subjects of commerce in the nature of imports.

This court in the more recent case of Crandall *vs.* State of Nevada, 6 Wall., p. 35, say:

Miller, J., delivering the opinion of the court: "The proposition that the power to regulate commerce, as granted to Congress by the constitution necessarily excludes the exercise by the State of any of the power thus granted, is one which has been much considered in this court and the earlier discussions left the question in much doubt. As late as the January Term 1849, the opinions of the judges in the *passenger cases* show that the question was considered to be one of much importance in those cases and was even then unsettled, though previous decisions of the court were relied on by the judges themselves as deciding it in different ways. It was certainly, so far as those cases affected it, left an open question.

"In the case of Cooley *vs.* Board of Wardens, four years later, the same question came directly before the court in reference to the local laws of the port of Philadelphia concerning pilots. It was claimed that they constituted a regulation of commerce and were therefore void. The court held that they did come within the meaning of the term 'to regulate commerce,' but that until Congress made regulations concerning pilots, the States were competent to do so.

"Perhaps no more satisfactory solution has ever been given of this vexed question than the one

furnished by the court in that case. After showing that there are some powers granted to Congress which are exclusive of similar powers in the States because they are declared to be so, and that other powers are necessarily so, from their very nature, the court proceeds to say, that the authority to regulate commerce with foreign nations and among the States includes within its compass powers which can only be exercised by Congress, as well as powers which, from their nature, can best be exercised by the State Legislature; to which latter class the regulation of pilots belongs. 'Whatever subjects of this power are in their nature national, or admit of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by congress.' In the case of Gilman *vs.* Philadelphia, this doctrine is reaffirmed and under it, a bridge across a stream navigable from the ocean, authorized by State law, was held to be well authorized in the absence of any legislation by Congress affecting the matter.

It may be that under the power to regulate commerce among the States, Congress has authority to pass laws, the operation of which would be inconsistent with the tax imposed by the State of Nevada, but we know of no such statute now in existence. Inasmuch, therefore, as the tax does not itself institute any regulation of commerce of a national character, or which has a uniform operation over the whole country, it is not easy to maintain, in view of the principles on which those cases were decided, that it violates the clause of the Federal Constitution which we have had under review."

The law in question is not national in its charter, but on the contrary is local in its application and confined to the State of New York. Its intention is to protect the State against the burdens

of the actual or possible pauperism of a certain class of persons brought within its territory. It is difficult, if not impossible, to see how Congress could legislate to afford this protection to the State of New York or to any other State. It could not do it or, if it could, has not. And although nearly a century has passed since the foundation of the government, and the exigencies during that period for a law of this character have been great, pressing and increasing, yet Congress has never acted, but left the subject exclusively to the State Legislatures. This is largely if not entirely due to the fact that the subject is one in regard to which no uniform law of Congress could easily, if at all, be framed. Congress has no power to establish and maintain poor-houses or hospitals for strangers in the different States, or to require (from the owners of vessels or passengers) bonds running in favor of a particular State or the payment to it of a tax to protect it from pauperism. It could only compel such bonds to be given or tax to be paid to the United States, and the various States under such a law would be as unprotected against pauperism as if it had never been enacted. It might improve the finances of the former, but to the latter it would be a dead letter. If, then, this law be within the compass of the authority conferred on Congress to regulate commerce it certainly comes within those " powers which, from their nature, can best be exercised by the State Legislatures."

The laws in question are thus within the principle in regard to these powers established by the court in the case of Crandall *vs.* The State of Nevada, 6 Wall., 35, and under that decision, valid.

VI.

The objection that this action cannot be maintained for the reasons set forth were properly taken by demurrer.

Knipper's Ex'rs *vs.* R. D. Church, 6 Paige, 570.

VII.

The decree below should be affirmed, with costs.
Dated New York, 7th January, 1876.

JOHN E. DEVELIN,
Of Counsel for the Com'rs of Emigration,
Appellees.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

Supreme Court

OF THE UNITED STATES.

JOHN HENDERSON AND THOMAS HENDERSON,
Appellants,

against

WILLIAM H. WICKHAM, MAYOR OF the City of New York, and the Commissioners of Emigration,
Respondents.

Brief and Points for the Respondent William H. Wickham, Mayor of the City of New York.

This is an appeal by the complainants from a final decree of the Circuit Court of the United States for the Southern District of New York in the Second Circuit, sustaining a general demurrer to complainants' bill of complaint for want of equity.

This cause arises under what are known as the Emigration Laws of the State of New York, the material parts of which are referred to in the bill, and provide, among other things:

First.—That the master of each and every vessel arriving in the port of New York from any place out of the State of New York shall, under a penalty, within a certain time after his arrival, make a report in writing to the mayor of the city of New York, stating the name, place of birth, last legal residence, age and occupation of certain passengers arriving by said vessel on her last voyage to said port, and specifying such as are maimed, above sixty years of age, under thirteen years of age, widows with families, women without husbands having families, and any person unable to take care of himself or herself, without becoming a public charge.

(Printed Record, pp. 2 and 9.)

Second—That the Mayor of the city of New York shall, by an indorsement of such report, require that the owner or consignee of the ship from which said persons are landed shall give a several bond to the people of the State, such bond being in a penalty and secured as therein provided and conditioned to indemnify and save harmless the Commissioners of Emigration and each and every city, town or county in the said State, from any cost which the said commissioners and each and every city, town or county should incur for the relief or support of the persons named in the bond, within five years from the date of the bond, and also to indemnify and refund to the said Commissioners of Emigration any expense or charge

they might necessarily incur for the support or medical care of the persons named therein, if received into the Marine Hospital or any other institution under their charge (Printed Record, p. p. 3 and 4); that the owner or consignee may commute for such bonds by paying to the Chamberlain of the city of New York, within a certain time, a certain sum of money for each and every person reported by the master (Printed Record, pp. 4, 5, 6 and 7); and a penalty is prescribed for neglect to give such bond or commnte (Printed Record, pp. 4 and 5).

Third.—That tho owner or consignee of the vessel bringing such passengers shall, within a certain time and under a penalty (as above mentioned), give such bonds or pay such commutation money as required by the order of the Mayor, endorsed on the report of the master.

Other and further provisions are made applicable to the cases of those who may be blind, maimed, &c., or paupers, or likely to become such, but they need not be considered here.

The bill, after stating that the complainants are aliens and reciting the said laws, sets forth that the complainants are the owners of a certain ship, which, at the time of the filing of the bill, had just arrived at New York. That among the passengers were three (who were within the description of those for whom bonds or commutation money were required by the above mentioned laws), but who landed in New York city, with the intention merely to pass through by the State, on their way to places without the State, and without any intention of becoming citizens of the State of New York;

that the master of the ship had made his report to the mayor of the city in conformity with the laws of the State in the bill of complaint referred to; that the complainants were apprehensive that the mayor might and would, in compliance with the terms of said laws require them to give bonds for such three passengers, or pay the commutation money; and it alleged that so far as they relate to passengers arriving at the port of New York with the intention of passing through the boundaries of the State of New York and going to other States and countries and not intending to become citizens of the State of New York, the said laws are in violation of the constitution of the United States, and are void; that if the mayor should require such bonds and complainants should refuse to either give the bonds or commute for them, they (complainants) would be sued for penalties, &c.; and for that and other reasons set forth in the bill, they prayed an injunction, enjoining the defendants from demanding bonds or commutation money for said three persons; and they also prayed the decree or judgment of the court declaring said laws so far as they relate to passengers arriving at the port of New York on their way to other States and countries, and not intending to become citizens of the State of New York, to be in violation of the constitution of the United States and void (printed record, p. 8).

On the bill and supporting affidavits a preliminary injunction was granted restraining the Mayor and Commissioners as prayed for in the bill (printed record, p. 11).

Each of the defendant interposed a general demur-

rer to the bill for want of equity (printed record, p. 13). The care was heard on the bill and demurrers, and the demurrers were allowed and the bill dismissed with costs (printed record, p. 14).

From the final decree entered thereon (printed re cord, p. 14), the complainants appeal to this court.

The questions arising in this case and submitted to this court for decision are :

1st. Whether those provisions of the Laws of the State of New York mentioned in the bill, which require the master of a vessel arriving at the port of New York to report within twenty-four hours after his arrival to the mayor of the city of New York, the names, ages, &c., of certain of the passengers arriving by his vessel, so far as they require the said master to report the names, ages, &c., of alien non-residents who arrive merely with the intention of passing through the State on their way to other states or countries, and without the intention of becoming citizens of the State, are contrary to and in violation of any provision of the Constitution of the United States, and so void.

2d. Whether those provisions of the said Laws of the State of New York, which require the mayor of the city of New York, to endorse on the report a requisition that the owner or consignee of such vessel shall give bonds for certain of the passengers arriving thereby, conditioned that such passengers shall not become a charge, &c., so far as they require the mayor to endorse a requisition that the owner or consignee shall give a bond or bonds conditioned that the alien

passenger or passengers who arrive merely with the intention of passing through the State on their way to other states or countries, and without the intention of becoming citizens of the State, shall not become a charge, &c., are contrary to and in violation of any provision of the Constitution of the United States, and so void.

3d. Whether those provisions of the said Laws of the State of New York, which require that such owner or consignee shall give bond or bonds conditioned as aforesaid, (or in lieu thereof, and as commutation therefor, pay a certain sum of money) for each passenger for whom a bond was required by the mayor, so far as they require that such owner or consignee shall give bond or bonds conditioned as aforesaid (or in lieu thereof and as commutation therefor, pay a certain sum of money) for alien passengers who arrive at the city of New York merely with the intention of passing through the State on their way to other states or countries, and without the intent of becoming citizens of the State, are contrary to and in violation of any provision of the Constitution of the United States, and so void.

But only the first and third need be examined; for if the Commissioners of Emigration have a right to exact the bond, if the penalty provided in case of refusal to give the bonds (or commute), may be imposed where the person for whom the bond is required is an alien who intends merely to pass through the State, and has no intention of becoming a citizen of the State, then, of course, the Mayor may lawfully endorse on the Master's report his requisition that bonds be

given for such persons. But if the Commissioners have no right to exact the bond, if the penalty may not lawfully be imposed in the case last mentioned, still that the Mayor required it makes no difference. It is the Commissioners of Emigration who are by law to exact it; it is for refusing to give to *them* the bond that the penalty is imposed. The duty of the Mayor is merely ministerial—merely clerical. It might just as well have been imposed on the Commissioners. The duties of the two are but parts of a whole, and are of such nature and so connected that if it be decided that the Commissioners may lawfully exact the bond, it necessarily follows that the Mayor may lawfully require it, but if the Commissioners may not lawfully exact the bond, the Mayor may not lawfully require it; and even if he were to do so, his requisition would be wholly without force or effect, for there would be no one empowered to enforce his requisition in any way.

POINTS.

I.

It is submitted that so far as the first question is concerned it is not now open to discussion. It has already been decided and settled by this court in the case of the Mayor, &c., of the City of New York *vs.* Miln (11 Peters, 102; 12 Curtis' Decisions, 357), which arose under the act of the State of New York, passed February 11, 1824, (Laws of the State of New York of 1824, chapter 37.)

That act required the master of every vessel arriving from a foreign port in the port of New York, to report to the mayor or recorder of the city of New York, the name, age, &c., of every passenger, of certain classes or descriptions, arriving in his vessel from a foreign port, and imposed a penalty on the master and owner or consignee of the vessel for failing to make the report. The action was brought against the consignee of a vessel to recover the amount of certain penalties incurred under the act, and was brought to this court from the Circuit Court of the Southern District of New York, on a certificate of division of opinion, and this court held that the above mentioned provisions of the act of 1824, were not regulations of commerce, but matters of police regulation, entirely within the powers and authority of the State, and in no way in conflict with the constitution of the United States.

The case at bar arises under the Act of May 5th, 1847 (laws of the State of New York of 1847, chapter 195, page 182), as amended. The report required by that act and its amendments, is similar to that required by the above cited Act of February 11th, 1824. The acts are (so far as relates to requiring a report to be made, of whom to be made, and the contents of the report), the same in substance and in almost the same words.

Therefore the former act, so far as its provisions are the same as those of the Act of 1824, which were under consideration in the Miln case, must also be held not to be in conflict with the constitution of the United States.

And the master of the Ethiophia, the steamship by which the three passengers mentioned in the plaintiff's bill of complaint arrived, and the master of every other of the plaintiffs' vessels, was and is lawfully bound and must continue to furnish to the Mayor of the city New York a list of *all* the passengers within the said descriptions or classes on his vessel coming from a foreign port, with their names, ages, sexes, &c.

Nor does it make any difference to what place such passengers or any of them are bound, whether they intend to remain in the State of New York, or merely land within its boundaries for the purpose of passing through and beyond the State to other States or countries. On their arrival in the State, within its borders, the State is entitled, as a matter of police regulation, to know who and what they are, and may make any reasonable regulation to enable it to obtain that information.

II.

The provisions of the act of the New York Legislature of May 5th, 1847, and the acts amendatory thereof, which require that the owner or consignee of a vessel arriving from a foreign port bringing passengers, shall give to the people of the State of New York, a penal bond for each such passenger, whose name, age, &c., has been reported to the mayor as required by the first section of said Act of 1847, as amended, conditioned to indemnify and save harmlesss the commissioners of emigration, and each and every town

and county in the State from any cost which said commissioners or said city, town or county, shall incur for the relief or support of the person named in the bond, within five years after its date, &c., do not in any way violate the provisions of the Constitution of the United States.

There can be no doubt that if the above mentioned provisions of Law are merely matters of police regulation, pertaining wholly to the administration of the internal affairs of the State, and in no way affecting commerce with foreign nations or between New York and other States the above proposition is sound. A careful examination of all the provisions of the acts will show that such is the case; and that the acts in question are not open to the same objections that were raised to other and prior acts of the Legislature of the State of New York in the "Passenger Cases," in this court, reported in 7th Howard's reports, page 283 (17 Curtis's decisions, 122); but in fact seem to have been carefully drawn with a view to obviate all the objections raised in those cases, to the former acts.

1st. The acts do not take effect until after. the passenger has landed and has become one of the general mass of persons in the State. They differ from the laws under consideration in the "Passenger Cases" which required—the Massachusetts law—that a fixed sum should be paid for each passenger, before he should be permitted to land from the vessel in which he arrived, and the New York law, that a fixed sum should be paid for each person on board the vessel, whether he should land or not. By the last mentioned laws a condition was affixed by the State to the free

intercourse of persons between the States of Massachusetts and New York respectively, and foreign countries and other States. The State laws operated on the passenger before the voyage was finished, before he had become a part of the mass of inhabitants of the State to which he was bound, while he was yet subject to the laws, rules and regulations which Congress has made or is empowered to make under the powers given to it to regulate commerce between the States and foreign nations and between the different States. The State laws under consideration in the present case do not take effect until twenty-four hours after the passenger has landed—after the voyage is entirely finished—after he has become an inhabitant of some city, town or county in the State, to whose hospital in case of sickness, and to whose poor-house in case of want (in case he be friendless and without means), he must be sent, unless he be left by the roadside to starve or die, which is a supposition which common humanity forbids as impossible of realization. If he be friendless, in want and sick, he *must* be sent to the hospital or poor-house and *must* be a public charge. It is only after the passenger has landed and has thus become liable to be a public charge, that the laws take effect.

2d—.The requirement of the laws is not that the owner or consignee of the vessel shall pay any sum of money as a condition of being allowed to bring a passenger into the State of New York, but that having brought him, having taken the responsibility of bringing to the State one who may become a charge upon it, by reason of poverty or sickness, he should secure the public against such charge. The requirement of

the law is that the owner or consignee shall give a bond conditioned to indemnify and save harmless the Commissioners of Emigration and every city, town and county in the State, in case the passenger brought by him should become a public charge and cause of expense. That is *all* that is required.

The payment of a sum of money as commutation is not *required*. That is simply permissive, a mode provided by which one largely engaged in the transportation of passengers may relieve himself from the burden and annoyance of having a large number of bonds outstanding at once. It is provided for the convenience of the owner and consignee—it is not imposed on him. And this case is not to be considered as if the law *required* or *exacted* commutation money from the owner or consignee, much less from the immigrant or passenger. The sole requirement of the laws is that the owner or consignee shall furnish *security* to the State, its cities, towns and counties; nothing in the nature of a tax, duty, impost or license fee is required.

There can be no doubt then that the Act of the Legislature of the State of New York of May 5th, 1847, and its amendments differs entirely from those acts pronounced unconstitutional in the Passenger Cases—that they are not in any sense regulations of or restrictions upon commerce or intercourse between the State of New York and other States or countries—and that they are strictly acts of municipal legislation or internal police, designed as precautionary measures against paupers, vagabonds and convicts—and so, as was admitted by this court in both the Miln case and the Passenger Cases, entirely within the province of State legislation.

III.

The bond may be lawfully exacted for every passenger within the description of the statute, independent of his ultimate destination, and without regard to his intentions—whether he lands with the intention of becoming a citizen of the State of New York, or lands merely for the purpose of passing through the State to some other State or country.

It is difficult, if not impossible, to see any distinction between the case of one coming to New York with the intention of merely passing through the State, and that of one coming to reside in the State. So long as the passenger is in the State, some city, town or county is liable to be called on to aid or assist him, to afford him relief from the poor fund, or to care for him in the hospital. The innumerable accidents and changes affecting life, health and fortune, always render this possible, even though the intention may be to remain in the State for but twenty-four hours. So long as the passenger remains in the State, security against his becoming a public charge should be provided.

Besides the intention may be changed. Forty-eight hours after landing the passenger may conclude to remain in the State, and then if no bond have been given for him, the public have no security.

But the requirement that a bond shall be given for him as provided in the law, in no way affects the passenger himself. It is no tax, no restriction on him. It costs him nothing: it does not impede or restrict, nor even impose any condition on his prosecuting his

journey to another State. In fact, the passenger, whatever be his destination, is not affected at all by these laws. They affect only the owner or consignee. And that not by way of imposing any tax or restriction on commerce or intercourse between the States, or between any of them and foreign countries; but simply by way of requiring of him security that the passenger, the responsibility of bringing whom into this State he has taken upon himself, shall not, during his stay in the State, whether it be long or short, become chargeable upon any city, town or county as a pauper, vagabond or otherwise.

IV.

The decree appealed from should be affirmed.

Wm. C. Whitney,
Counsel to the Corporation,
Of Counsel for Defendant,
The Mayor of the City of New York.

J. Kernan
of Counsel for
Appellee

Supreme Court of the United States.

JOHN HENDERSON AND THOMAS HENDERSON,
APPELLANTS,
vs.
WILLIAM H. WICKHAM, MAYOR OF THE CITY OF NEW YORK, AND THE COMMISSIONERS OF EMIGRATION,
RESPONDENTS.

I. The question arising in this case was not adjudicated against the respondents in what are known as the "Passenger Cases," reported in 7 Howard, p. 283, &c. The statute under consideration in the case at bar and the acts held invalid in those cases are materially different.

1st. The statute of New York in question in Smith *vs.* Turner, one of those cases, is set out in the report of the case. (See pp. 283–284.) The statute of Massachusetts which was under consideration in Norris *vs.* The City of Boston, in the other case, is set out at pp. 285–286.

The court held these statutes invalid, on the ground that they were not police regulations to protect the State against pauperism, and were laws imposing a direct tax on the passengers before they landed or became subject to the State jurisdiction.

Mr. Justice McLean says, at page 404: "But the health "law, as it is called, under consideration, is altogether

" different in its objects and means. It imposes a tax or " duty on the passengers, officers, and sailors, holding the " master responsible for the amount at the intermediate " termination of the voyage, and necessarily before the " passengers have set their feet on land; * * and " the professed object of the tax is as well for the benefit " of juvenile offenders as for the Marine Hospital." (See also p. 403.)

At page 405 the same Justice says: " When they (the " passengers) leave the ship and mingle with the citizens " of the State, they become subject to its laws."

Justice McLean holds that the first and second sections of the Massachusetts statute are valid. (See same p., 409.) These sections authorized and required the officers of the State to board the ship and examine the condition of the passengers; and if, on such examination, there shall be found " among said passengers any lunatic, idiot, maimed, " aged, or infirm person, incompetent, in the opinion of " the officer so examining, to maintain themselves, or who " have been paupers in any other country, no such alien " passenger shall be permitted to land until the master," &c., shall give a bond, with sufficient sureties, that such passenger shall not become a public charge within ten years.

Justice McLean says: " This is the exercise of an un- " questionable power in the State to protect itself from " foreign paupers and other persons who would be a public " charge." (P. 410.)

The third section of the Massachusetts law was held invalid. This section declared that " no alien passenger, " other than those for whom bonds were given under the " second section, should be permitted to land until the " master, owner, consignee, or agent of the vessel should " pay two dollars for each passenger." (See sec. 3, p. 409.)

McLean, J., at page 410, says: "The tax of $2 was paid "by the master for each of these passengers before they "were permitted to land. This, according to the view "taken in the above case of Smith *vs.* Turner, was a regu- "lation of commerce; and not being within the power of "the State, the act imposing the tax is void."

Mr. Justice Wayne concurred in the judgment in these cases. (See p. 410.) He holds, among other things, that "the acts of Massachusetts and New York, imposing any "tax upon foreigners or immigrants, for any purpose what- "ever, whilst the vessel is *in transitu* to her port of desti- "nation, though said vessel may have arrived within the "jurisdictional limits of either of the States of Massachu- "setts or New York, and before the passengers have been "landed, are in violation of said acts of Congress, and "therefore unconstitutional and void." (See p. 413.)

At pages 422, 423, he says: "Though in its transit it "(the vessel) enters the territory of a State the political "jurisdiction of the State cannot interfere with it by tax- "ation in any way until the voyage has ended; not until "the persons who may be brought as passengers have "been landed, or the goods which may have been entered "as merchandise have passed from the hands of the im- "porter or have been made by himself a portion of the "mass of the general property of the State. It is upon "this distinction between territorial and political jurisdic- "tion that the case of Brown *vs.* Maryland rests. In these "cases the laws complained of meet the vessels when they "have arrived in the harbor, on the way to the port to which "they are bound, before the passengers have been landed. "And before they are landed they are met by superadded "conditions in the shape of a tax, with which it is said they "must comply, or the captain must pay for them, before "they are permitted to land. Certainly it is not within

" the political jurisdiction of a State in such circumstances " of a voyage to tax passengers."

See, also, opinion of Mr. Justice Catron, p. 452.

Mr. Justice McKinley concurred in the opinions of Justices McLean and Catron, (p. 452.) He adds at page 455: " It therefore follows that passengers can never be subject " to State laws until they become a portion of the popula- " tion of a State temporarily or permanently."

Mr. Justice Grier concurred in the judgment. In speaking of the third section of the Massachusetts law, he says at page 458: " It is not an exercise of the police power " with regard to paupers, idiots, or convicts. The second " section effectually guards against injury from them."

2d. The act of the legislature of New York to be now passed upon by the court does not impose a tax upon the passenger.

It does not impose any duty or burden upon or in reference to him while he is a passenger, or as a condition to his landing from the vessel.

It provides that " within 24 hours *after the landing of* " *any passenger* from any ship or vessel arriving at the " port of New York," the master of the vessel " from which " such passenger or passengers shall have been landed" shall make to the mayor of the city of New York the report specified. (See sec. 1 of chap. 195 of laws of 1847, as amended by chap. 350 of the laws of 1849, and chap. 523 of the laws of 1851.) This section, as amended, is set out on pages 4, 5, and 6 of printed laws handed the court.

The act further provides that it shall be the duty of the mayor, by an endorsement to be made on the said report, to require the owner or consignee of the vessel from which such *persons were landed* to give a several bond to the

people of the State in a penalty of $300 for each and every person included in said report, conditioned to indemnify the Commissioners of Emigration and each and every city, county, or town in the State from any cost which either may incur within five years for the relief or support of the persons named in the bond.

It further provides that it shall be lawful for any owner or consignee, at any time within 24 hours after the landing of such persons or passengers from the vessel, to commute for the bond or bonds so required by paying to the Health Commissioners of the city of New York the sum of $1.50 for each and every passenger reported. (See sec. 2 of chap. 350 of the laws of 1849, as amended by chap. 523 of the laws of 1851. This section as amended is set out on pages 7, 8, 9 of printed laws handed the court.)

The act provides for the prosecution of the bond if the person named therein shall become a public charge.

It also provides for the relief of those in want for whom bonds have been given or commutation paid.

And it imposes a penalty upon the owner or consignee of the vessel for neglect to give the bond or pay the commutation.

Chap. 195 of Laws of 1847; chap. 350 of Laws of 1849.

II. The statute under consideration in this case is not a regulation of commerce. It is a police regulation to protect the people of the State from foreign paupers.

1st. That the State has power to do this by legislative enactments of the general character of the law in question would seem to be settled by this court.

City of New York *v.* Miln, 11 Peters, 102.

The Passenger Cases, 7 Howard, per McLean, J., pp. 400, 406, 409, 410.

paying a small sum instead of giving a bond of indemnity for each does not render the law invalid. This is at the option of the owner or consignee. It cannot be tortured into an indirect mode of imposing a tax or duty upon the passenger as such. The option is allowed as a favor to the owner or consignee of the vessel. The commutation is by no means as perfect a protection to the State as a bond on behalf of each indigent person landed.

5. It is alleged that the three immigrants mentioned in the bill herein *intended* to leave the State immediately.

There is no allegation that this was made known to the State officers.

But, if this intention had been communicated to the officers, what indemnity had the State that they would not be a charge to the State before they left it? They might become sick and a public charge before they could get out of the State. They might change their intention to depart.

IV. It is believed that it will not be seriously contended that this statute is void, because it is in conflict with any statute of the United States, or treaty made by it.

If any such claim is made, we refer to what is said by the Chief-Justice in the "Passenger Cases" on this subject as an answer. (See 7 Howard, pp. 471 to 474.)

V. It is respectfully submitted that the decree of the circuit court should be affirmed.

FRANCIS KERNAN,
Of Counsel for Respondents.

Laws of the State of New York concerning Passengers in Vessels coming to the City of New York.

SUPREME COURT OF THE UNITED STATES,

No. 880.

JOHN HENDERSON AND THOMAS HENDERSON, APPELLANTS,

vs.

WILLIAM H. WICKHAM, MAYOR OF THE CITY OF NEW YORK, AND THE COMMISSIONERS OF EMIGRATION.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN E. DEVELIN,
Of Counsel for
The Commissioners of Emigration.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y

Supreme Court

OF THE UNITED STATES.

JOHN HENDERSON AND THOMAS HENDERSON,
Appellants,

vs.

WILLIAM H. WICKHAM, MAYOR of the City of New York, and the Commissioners of Emigration,
Appellees.

Laws of the State of New York, concerning passengers in vessels coming to the city of New York, which were in force on the 24th day of June, 1875, the date of the arrival of the steamship *Ethiopia* at the port of New York, and which are applicable to the above entitled action.

CHAP. 195, LAWS OF 1847.

An Act concerning Passengers in Vessels coming to the City of New York. Passed May 5th, 1847.

SEC. 4.—Gulian C. Verplanck, James Boorman, Jacob Harvey, Robert B. Minturn, William F. Havemeyer and

David C. Colden, are hereby appointed commissioners, for the purpose of carrying into effect the intent and provisions of this act, of whom the said Gulian C. Verplanck and James Boorman shall constitute the first class, and shall hold their office two years; the said Jacob Harvey and Robert B. Minturn shall constitute the second class, and hold their office four years; and the said William F. Havemeyer and David C. Colden shall constitute the third class, and hold their office for six years; and upon the expiration of their several terms of office their places shall be filled by appointments, to be made by the Governor, by and with advice and consent of the Senate, and the persons so appointed shall respectively hold their offices for the term of six years. The mayor of the city of New York, the mayor of the city of Brooklyn, the president of the German Society, and the president of the Irish Emigrant Society of New York, shall also severally, by virtue of their respective offices, be commissioners as aforesaid. The said commissioners shall be known as the "Commissioners of Emigration," and by that title shall be capable of suing and being sued; the money so as aforesaid to be paid to the Chamberlain of the city of New York shall be paid out on the warrant of the said commissioners, or a majority of them. It shall be the duty of the said commissioners to provide for the maintenance and support of such of the persons for whom commutation money shall have been paid as aforesaid, or on whose account bonds shall have been taken as aforesaid, as would otherwise become a charge upon any city, town or county of this State; and the said commissioners shall appropriate the moneys aforesaid for that purpose in such manner as to indemnify, so far as may be, the several cities, towns and counties of the State, for any expense or charge which may be incurred for the maintenance and support of the persons aforesaid; such appropriation shall be in proportion to the expenses incurred by said cities, towns and counties, severally, for such maintenance and support. And the more fully to effect the object contemplated by this act, the said commissioners are authorized to apply, in their discretion, any part of the said money to aid in removing any of said persons from any

part of this State to another part of this or any other State, or from this State, or in assisting them to procure employment, and thus prevent them becoming a public charge. The said commissioners are also authorized, in their discretion, to apply any part of the said moneys to the purchase or lease of any property, or the erection of any building which they may deem necessary for the purposes aforesaid. But any expense so incurred by the commissioners in any city, town or county, shall be charged to the share of such moneys which any such city, town or county, shall be entitled to receive thereof, for expense incurred in the support or maintenance of the persons for whom commutation money shall have been paid as aforesaid, or on whose account bonds shall have been taken as aforesaid.

SEC. 5. In case any of the persons for whom commutation money has been paid as aforesaid, or for whom a bond has been given as aforesaid, shall, at any time within five years from the payment of such money or the execution of such bond, became chargeable upon any city, town or county within this State, it shall be the duty of the said commissioners to provide for the payment of any expense incurred by any such city, town or county, for the maintenance and support of any such person, out of the commutation money to be paid as aforesaid, and the moneys collected on such bonds, so far as the same will enable them to do so. The said commissioners shall prescribe such rules and regulations as they shall deem proper, for the purpose of ascertaining the right, and the amount of the claim of any city, town or county, to indemnity under the provisions of this and the preceding section. The said commissioners shall have power to provide for the support and maintenance of any persons for whom commutation money shall have been paid, or on whose account a bond shall have been given as hereinbefore provided, and who shall become chargeable upon any city, town or county, in such manner as they shall deem proper; and after such provision shall have been made by such commissioners, such city, town or county shall not be entitled to claim any further indemnity for the support and maintenance of such person.

CHAP. 302, LAWS OF 1873.

SEC. 1. It shall be the duty of the Governor, by and with the advice and consent of the Senate, and within ten days after the passage of this act, to appoint six Commissioners of Emigration for the State of New York. Two of said commissioners shall be appointed, and shall hold their office for two years; two of said commissioners shall be appointed, and shall hold their office for four years; and two of said commissioners shall be appointed, and shall hold their office for six years, and that the mayor of the city of New York, the president of the German Emigrant Society of the city of New York, and the president of the Irish Emigrant Society of the city of New York, shall be additional commissioners of emigration, by virtue of their respective offices, but that the two last named commissioners shall not have the right to vote upon the appointment or removal of subordinates the said Commissioners of Emigration shall have all the powers and perform all the duties now imposed upon the Commissioners of Emigration by virtue of an act entitled: "An Act concerning passengers in vessels coming to the city "of New York," passed May 5th, 1847, and the various acts supplementary thereto and amendatory thereof.

CHAP. 523, LAWS OF 1851.

SEC. 3. The first section of an act entitled "An Act concerning passengers in vessels coming to the city of New York," passed May 5th, 1847, as the same was amended by the first section of an act entitled "An Act to amend certain acts concerning passengers coming to the city of New York," passed April 11th, 1849, is hereby further amended so as to read as follows:

Within twenty-four hours after the landing of any passenger from any ship or vessel arriving at the port of New York, from any of the United States other than this State, or from any country out of the United States, the master or commander of the ship or vessel from which such passenger or passengers shall have been landed, shall make a report in

writing, on oath or affirmation, to the mayor of the city of New York, or, in case of his absence, or other inability to serve, to the person discharging the duties of his office, which report shall state the name, place of birth, last legal residence, age, and occupation of every person or passenger who shall have landed from such ship or vessel on her last voyage to said port, not being a citizen of the United States, and who shall have, within the last twelve months, arrived from any country out of the United States, at any place within the United States, and who shall not have paid the commutation money, or been bonded according to the provisions of this act, or of the act hereby amended, or of the act of February 11th, 1824, concerning passengers in vessels coming to the port of New York, nor paid commutation money under the provisions of this or any former act. The same report shall contain a like statement of all such persons or passengers aforesaid as shall have been landed, or been suffered to land from any such ship or vessel at any place during such last voyage, or who shall have been put on board or suffered to go on board of any other ship, vessel or boat, with the intention of proceeding to and landing at the said city of New York, or elsewhere within the limits of this State. The said report shall further specify whether any of the said passengers, so reported, are lunatic, idiot, deaf, dumb, blind, infirm [maimed, or above the age of sixty years; also designating all such passengers as shall be under the age of thirteen, or widows having families, or women without husbands having families, with the names and ages of their families]; and shall further specify particularly the names, last place of residence, and ages of all passengers who may have died during the said last voyage of such vessel; also the names and residences of the owner or owners of such vessel. In case any such master or commander shall omit or neglect to report as aforesaid any such person or passenger, with the particulars aforesaid, or shall make any false report or statement in respect to any such person or passenger, or in respect to the owner or owners of any such vessel, or in respect to any of the particulars hereinbefore specified, such master or commander shall forfeit the sum of seventy-five dollars for every

such passenger, in regard to whom any such omission or neglect shall have occurred, or any such false report or statement shall be made, for which the owner or owners, consignee or consignees of every such ship or vessel shall also be liable, jointly and severally, and which may be sued for and recovered, as hereinafter provided.

SEC 4. Section third of the said act concerning passengers coming to the city of New York, passed May 5th, 1847, as the same was amended by section three of the "Act to amend certain acts concerning passengers coming to the port of New York," passed April 11th, 1849, is hereby further amended so as to read as follows: It shall be the duty of the Commissioners of Emigration, hereafter named, to examine into the condition of passengers arriving at the port of New York in any ship or vessel, and for that purpose all or any of the said commissioners, or such other person or persons as they shall appoint, shall be authorized to go on board and through any such ship or vessel, and if on such examination there shall be found among such passengers any lunatic, idiot, deaf, dumb, blind, maimed, or infirm persons, or persons above the age of sixty years, or widow with a child or children, or any woman without a husband, and with a child or children, or any person unable to take care of himself or herself without becoming a public charge, or who, from any attending circumstances, are likely to become a public charge, or who, from sickness or disease existing at the time of departure from the foreign port, are or are likely soon to become a public charge, they shall report the same to the said mayor particularly, and thereupon, and unless a bond, as required in the second section of this act, shall have been given, the said mayor, or the person discharging the duties of his office, shall require in the endorsement to be made as aforesaid, or in any subsequent endorsement or endorsements thereon, and in addition to the commutation money, that the owner or consignee of such ship or vessel, with one or more sufficient sureties, shall execute a joint and several bond to the people of the State in a penalty of five hundred dollars for every such passenger, conditioned

to indemnify and save harmless the Commissioners of Emigration, and each and every city, town or county within the State from any further cost or charge which said commissioners, or any such city, town or county, shall incur for the maintenance or support of the person or persons named in such bond, or any of them, within five years from the date of such bond. The sureties to the said bond shall be required to justify before and to the satisfaction of the officer making such endorsement, and by their oath or affirmation shall satisfy such officer that they are respectively residents of the State of New York, and worth double the amount of the penalty of such bond, over and above all debts, liabilities, and all property exempt from execution. The subsequent endorsement authorized in this section may be made at any time within (thirty) days after such examination, or of the landing of any such person or passenger.

SEC. 7. Section second of chapter three hundred and fifty of the Laws of eighteen hundred and forty-nine, is hereby amended, so as to read as follows: It shall be the duty of the said mayor or other person discharging the duties of his office aforesaid, by an endorsement to be made on the said report, to require the owner or consignee of the ship or vessel from which such persons were landed, to give a several bond to the people of the State, in a penalty of three hundred dollars for each and every person or passenger included in such report, such bond being secured as hereinafter provided, and conditioned to indemnify and save harmless the Commissioners of Emigration, and each and every city, town or county in this State, from any cost which said commissioners, or such city, town or county shall incur for the relief or support of the person named in the bond, within five years from the date of such bond, and also to indemnify and refund to the Commissioners of Emigration any expense or charge they may necessarily incur for the support or medical care of the persons named therein, if received into the Marine Hospital or any other institution under their charge.

Each and every bond shall be secured by two or more

sufficient securities, being residents of the State of New York, each of whom shall prove, by oath or otherwise, that he is owner of a freehold in the State of the value of three hundred dollars over and above all or any claim or lien thereon or against him, including therein any contingent claim which may accrue from or upon any former bond given under the provisions of this act; or such bond may, at the option of the party, be secured by mortgage of real estate, or by the pledge and transfer of public stock of the United States, or of the State of New York or of the city of New York, or by deposit of the amount of penalty in some bank or trust company; such security, real or personal, having been first approved by the said mayor. It shall be lawful for any owner or consignee at any time within twenty-four hours after the landing of such persons or passengers from any ship or vessel in the port of New York, except as in the section hereinafter provided, to commute for the bond or bonds so required, by paying to the Health Commissioners of the city of New York the sum of one dollar and fifty cents by sec. 1, ch. ,475, Laws 1871), for each and every passenger reported by him, as by law required; the receipt of such sum by said Health Commissioners shall be deemed a full and sufficient discharge from the requirements of giving bonds as above provided. The said Health Commissioner is hereby required to pay over daily the said money with an account thereof to the chamberlain of the city of New York. But no owner or consignee shall be authorized to commute for the bond so required for any passenger arriving in the port of New York between the first day of December and the fifteenth day of April, who may be sent to the Marine Hospital from shipboard, by the Health Officer, or by the authority of the Board of Health of the city of New York, on account of illness from ship fever. The Commissioners of Emigration shall have authority to commute specially for any bond in such cases, at such rates and in such manner as shall appear to them equitable and proper. It shall be the duty of the Health Officer to report without delay to the Commissioners of Emigration the names of all passengers sent by his order during the above mentioned period, from shipboard, to the

Marine Hospital on account of illness from ship fever. For the duties performed by the Health Commissioner, and named in this section, he shall be paid by the Commissioners of Emigration at the rate of seventeen hundred and fifty dollars per annum, and he shall be paid the remainder of his salary by the Mayor, Aldermen and Commonalty of the city of New York. And at and after the expiration of the term of the present Health Commissioner, it shall be lawful for the Commissioners of Emigration to select for the performance of the duties named in this section, and now performed by the Commissioner of Health, either the Mayor of the city of New York, or the Chamberlain of said city, or the Health Commissioner, and the compensation for the performance of said duties shall be so much as such officer, so selected, and the Commissioners of Emigration may agree upon, and thereafter the salary of the Health Commissioner shall be fixed by the Mayor, Aldermen and Commonalty of the city of New York, and paid from the treasury of said city.

CHAPTER 339, LAWS OF 1850.

SEC. 2. The fifth section of the act entitled "An Act to amend certain acts concerning passengers coming to the city of New York," passed April 11th, 1849, is hereby amended, so as to read as follows:

If any owner or consignee as aforesaid shall refuse or neglect to give any such bond or bonds as hereinbefore required according to the second section of this act, for each person or passenger landing from his ship or vessel within *three days* after the landing of such persons or passengers or shall not, within that time have paid the moneys authorized by said second section to be received in cases where such bonds are herein authorized to be commuted for, or shall refuse or neglect to give the bonds required by the third section of this act to be given in certain cases, on the requirement of the mayor of the city of New York or other person discharging the duties of his office, made according to the provisions of said section, within *six days* after such require-

ment being so made, every such owner or consignee of such ship or vessel, severally and respectively, shall be subject to a penalty of five hundred dollars for each and every person or passenger on whose account such bond may have been required or for whom such commutation money might have been paid under this act; such penalty to be sued for as provided for in the twelfth section of the said act hereby amended in every case where any fine, penalty or forfeiture shall be incurred by the owner or owners, consignee or consignees, master or commander of any vessel arriving at the port of New York under any of the provisions of the acts concerning passengers coming to the city of New York, passed 5th May, 1847, and of this act by reason of their neglect or refusal to give the bonds, or any of them, required by law, the consignee of such passengers in relation to whom such neglect or refusal shall have occurred shall be liable in the same penalties and may be sued and recovered against in the same manner as is by law provided in relation to the owner or owners, consignee or consignees of the vessel.

CHAP. 147, LAWS OF 1856.

SEC. 36. Section five of chapter three hundred and fifty of the Laws of eighteen hundred and forty-nine, is hereby amended so as to read as follows: Any owner or consignee as aforesaid who shall neglect or refuse to give any such bond or bonds and security therefor, as hereinbefore required, for each person or passenger landing from his ship or vessel within *twenty-four hours* after the landing of such persons or passengers, in respect to bonds required by the second section of this act, or shall not, within that time, have paid the moneys authorized by said second section to be received in cases where such bonds are herein authorized to be commuted for, every such owner or consignee of such ship or vessel, severally and respectively, shall be subject to a penalty of five hundred dollars for each and every person or passenger on whose account such bond may have been required, or for whom such commutation money might have been paid under this act; such penalty to be sued for as provided for in the twelfth section of the said act hereby amended.

CHAP. 339, LAWS OF 1850.

SEC. 1. The thirteenth section of the act entitled "An Act concerning passengers in vessels coming to the City of New York," passed May 5th, 1847, is hereby amended so as to read as follows:—

Any ship or vessel, whose master or commander, owner or owners shall have incurred any penalty or forfeiture under this act, or under the act of 11th April, 1849, amending the same, entitled "An Act to amend certain acts concerning passengers coming to the city of New York," shall be liable for such penalties or forfeitures, which may be a lien upon such ship or vessel, and may be enforced and collected by a warrant of attachment, in the same manner as is provided in title eight of chapter eight of the third part of the Revised Statutes, all the provisions of which title shall apply to the forfeitures and penalties imposed by this act; and the said Commissioners of Emigration shall, for the purposes of such attachment, be deemed creditors of such ship or vessel, and of her master or commander and owner or owners respectively.

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